

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7664

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P/S

United States Court of Appeals

For the Second Circuit

CHAMPION INTERNATIONAL CORPORATION,

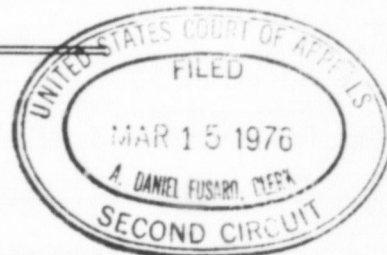
Plaintiff-Appellee,

v.

CONTINENTAL CASUALTY COMPANY,

Defendant-Appellant.

**JOINT APPENDIX
VOLUME I OF TWO VOLUMES
(Pages JA1 to JA301)**



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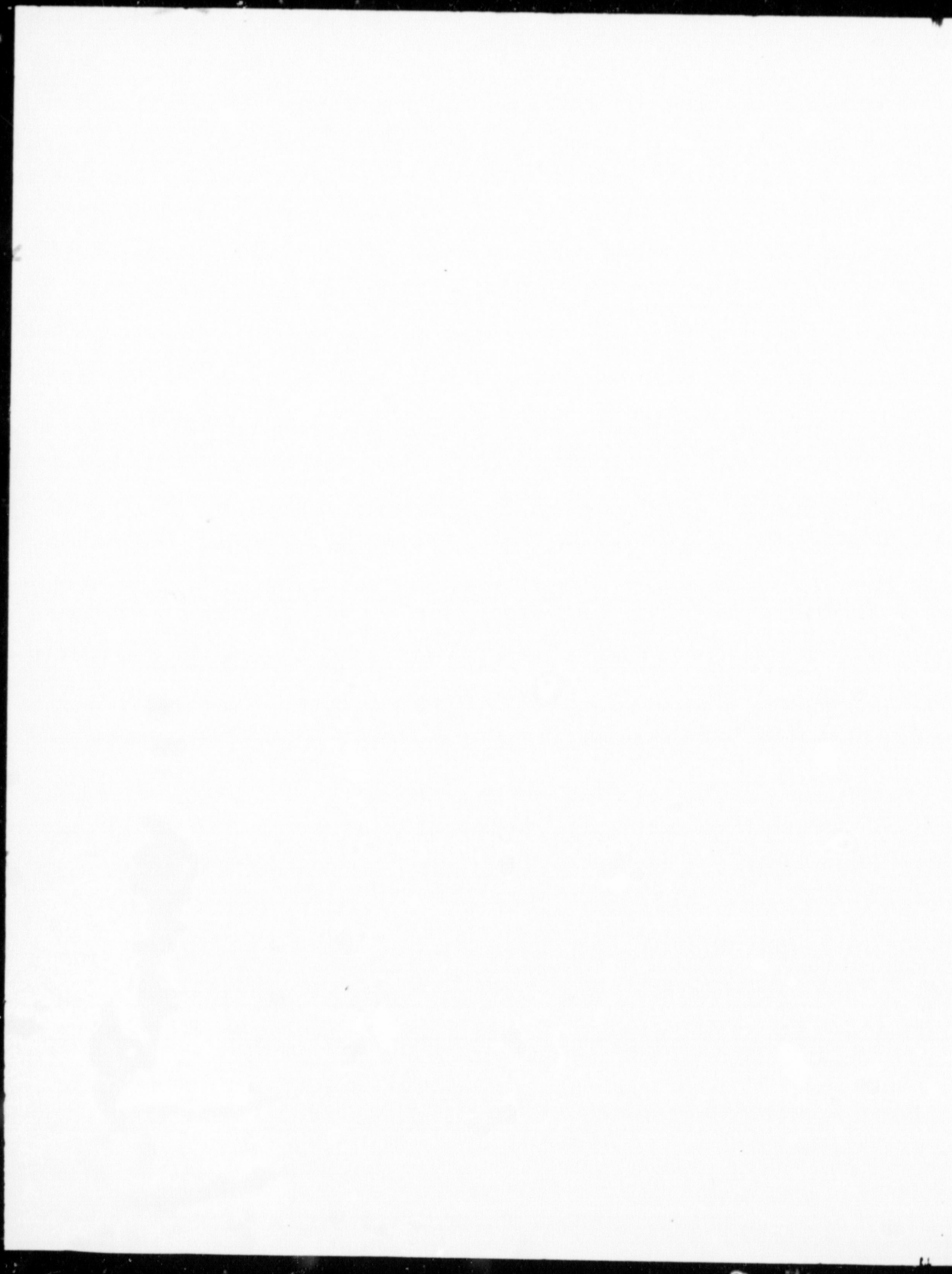


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Relevant Docket Entries

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

70 Civ. 5277

CHAMPION INTERNATIONAL CORPORATION,
Plaintiff,
against

CONTINENTAL CASUALTY COMPANY,
Defendant.

<i>Date</i>	<i>Proceedings</i>
12- 2-70	Filed petition and bond for removal from Supreme Court, State of New York.
12-30-70	Filed answer to complaint.
2-21-71	Filed defendant's interrogatories.
3- 3-71	Filed defendant's notice of motion to vacate notice of depositions returnable March 11, 1971.
3- 5-71	Filed plaintiff's notice to take deposition of defendant.
4-17-71	Filed plaintiff's request for production of documents.
5- 5-71	Filed memorandum endorsed on motion papers filed March 3, 1971. The notice of deposition is vacated. Defendant shall produce for deposition a person conversant with the issues with authority to bind the corporation. So ordered. Metzner, J.
5-26-71	Filed plaintiff's answers and objections to defendant's interrogatories.

Relevant Docket Entries

<i>Date</i>	<i>Proceedings</i>
6-21-71	Filed defendant's request for production of documents.
8-10-71	Filed defendant's response to plaintiff's request for production of documents.
10- 4-71	Filed plaintiff's response to defendant's request for production of documents.
10-14-71	Filed defendant's affidavit and notice of motion to compel plaintiff to answer interrogatory, returnable October 21, 1971.
10-14-71	Filed defendant's affidavit and notice of motion to compel plaintiff to produce documents returnable October 21, 1971.
11-24-71	Filed defendant's notice of motion to compel answers to certain interrogatories, returnable December 2, 1971.
1-24-72	Filed plaintiff's affidavit and notice of motion for order compelling defendant to produce documents, returnable February 24, 1972.
6-16-72	Filed stipulation and order that defendant's motion requiring plaintiff to compile information, and for plaintiff to produce documents and plaintiff's motion requiring defendant to produce documents returnable June 15, 1972 are withdrawn; the withdrawal of motions shall not be deemed to constitute a waiver of the requests raised, etc. So ordered. Cooper, J.
3-21-73	Filed stipulation and order that the caption shall be changed to Champion International Corporation, all papers shall be deemed amended accordingly. So ordered. Stewart, J.

Relevant Docket Entries

<i>Date</i>	<i>Proceedings</i>
7-20-73	Filed plaintiff's notice of taking deposition of Riviera Manufacturing Company upon written questions on July 20, 1973, at 10:00 a.m.
7-20-73	Filed plaintiff's notice of taking deposition of Cobra Industries, Inc. upon written questions on July 26, 1973, at 10:00 a.m.
7-20-73	Filed plaintiff's notice of taking deposition of Rancho Trailer Manufacturing Company upon written questions on July 30, 1973, at 10:00 a.m.
7-20-73	Filed plaintiff's notice of taking deposition of Nauta Line, Inc. on July 27, 1973, at 9:30 a.m.
7-20-73	Filed plaintiff's notice of taking deposition of Lofgren Manufacturing Company on July 27, 1973, at 10:00 a.m.
7- 2-74	Pre-trial conference before Pollack, J.
10-16-74	Non-jury trial begun and concluded. Decision reserved. Solomon, J.
10-16-74	Filed stipulation and order that the complaint is amended in connection with the amount of plaintiff's claim, etc. as indicated. So ordered. Solomon, J.
5- 6-75	Filed opinion #42356. The Court finds in favor of plaintiff. In making this determination I have given no weight to the fact that Liberty, under its policy, paid Champion. This opinion shall constitute the findings of fact and conclusions of law in accordance with Rule 52(a). The parties may submit additional findings. Plaintiff shall submit an appropriate judgment in accordance with this opinion. Solomon, J.

Relevant Docket Entries

<i>Date</i>	<i>Proceedings</i>
6-17-75	Filed memorandum that the issue of damages should not require a great deal of preparation. The trial on that issue should require not more than a day. Unless the parties on or prior to July 1, 1975 have stipulated on the amounts paid by plaintiff in settlement of claims which they assert are covered by Continental Casualty's policy, I shall set the issue of damages for trial no later than Thursday, August 21, 1975. I do not propose to enter an order from which an interlocutory appeal may be taken. Solomon, J.
6-18-75	Filed defendant's notice of taking deposition of plaintiff on June 24, 1975.
6-20-75	Filed order. Both plaintiff and the defendant accepted my invitation and submitted proposed findings. My opinion is limited to the issue of liability. When I have decided the damages, I shall make additional findings, and based on the findings on both the issue of liability and damages, I will enter a judgment. Solomon, J.
7- 2-75	Filed plaintiff's request for admission of facts.
7-31-75	Filed plaintiff's affidavit and notice of motion to overrule objections, etc. under Rules 36 and 37, returnable August 8, 1975.
8- 5-75	Filed plaintiff's affidavit of Seymour Shainswit in opposition to defendant's motion to overrule objections.
9-23-75	Filed defendant's affidavit and notice of motion for an order overruling objections pursuant to Rule 37, returnable August 4, 1975.

Relevant Docket Entries

<i>Date</i>	<i>Proceedings</i>
9-23-75	Filed defendant's affidavit in opposition to plaintiff's motion pursuant to Rules 36 and 37.
9-23-75	Filed defendant's affidavit in opposition to motion to vacate notice to take deposition.
9-23-75	Filed defendant's response to plaintiff's request for admission of facts.
9-23-75	Filed plaintiff's affidavit and notice of motion to vacate defendant's notice to take deposition, returnable June 17, 1975.
9-29-75	Hearing begun before Solomon, J. and concluded. Stipulation to be submitted by October 1, 1975 by both parties.
11- 3-75	Filed memorandum opinion #43328. Plaintiff was requested to submit an appropriate judgment. Plaintiff did submit such a judgment for indicated amount plus interest. Plaintiff and defendant submitted request for additional findings. In a memorandum dated June 18, 1975, I rejected all of them. I therefore hold that plaintiff is entitled to a judgment against the defendant for \$1,000,000.00 with interest from the dates plaintiff made payments to Liberty Mutual in settlement of the claims against plaintiff. This memorandum opinion on the issue of damages shall constitute findings of fact and conclusions of law under Rule 52(a). Plaintiff shall forthwith submit a form of judgment in accordance with this memorandum opinion dated October 31, 1975. Solomon, J.

Relevant Docket Entries

<i>Date</i>	<i>Proceedings</i>
11-18-75	Filed judgment #75,903 that plaintiff recover from defendant the sum of One Million Dollars (\$1,000,000.00) with interest as indicated herein making a total judgment of One Million Three Hundred Twenty Thousand One Hundred Thirty-Nine and 64/100 Dollars (\$1,320,139.64), which judgment shall bear interest from Nov. 1, 1975, at the rate of 6 percent per year. Judgment entered Nov. 18, 1975. Clerk.
11-26-75	Filed defendant's notice of appeal to the United States Court of Appeals for the Second Circuit from the final judgment entered on November 18, 1975. Mailed copy to Kronish, Lieb, Shainswit, Weiner & Hellman.
11-26-75	Filed defendant's supersedeas bond #5653531 in the sum of \$1,465,605.00.

Petition for Removal

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

*To the Judges of the United States District Court for the
Southern District of New York:*

The petition of Continental Casualty Company respectfully shows:

1. On November 23, 1970, an action was commenced against petitioner in the Supreme Court of the State of New York, County of New York, entitled "U.S. Plywood-Champion Papers Inc., Plaintiff, against Continental Casualty Company, Defendant", by service upon petitioner of a summons and complaint, copies of which are annexed hereto as Exhibit "1". No further proceedings have been had in said action.

2. The above described action is a civil action of which this Court has original jurisdiction under the provisions of Title 28, United States Code, Section 1332, and is one which may be removed to this Court by petitioner, defendant therein, pursuant to the provisions of Title 28, United States Code, Section 1441, in that it is a civil action between citizens of different states wherein the matter in controversy exceeds the sum or value of \$10,000.00 exclusive of interest and costs, and defendant is not a citizen of the State of New York.

Upon information and belief, plaintiff at the time this action was commenced was, and still is, a corporation incorporated under the laws of the State of New York, having its principal place of business in the State of New York.

JA8

Petition for Removal

Defendant at the time this action was commenced was, and still is, a corporation incorporated under the laws of the State of Illinois, having its principal place of business in the State of Illinois, and was not and is not a citizen of the State of New York.

3. Petitioner files herewith a bond in the penal sum of \$500.00 with good and sufficient surety conditioned, as provided by Title 28, United States Code, Section 1446 (d), that it will pay all costs and disbursements incurred by reason of these removal proceedings should it be determined that the case was not removable or was improperly removed.

WHEREFORE, petitioner prays that the above action now pending against it in the Supreme Court of the State of New York, County of New York, be removed therefrom to this Court.

Dated: New York, New York
December 2, 1970.

HART & HUME
Attorneys for Petitioner

By: /s/ LEWIS STOCKMAN
A Member of the Firm

(Verified by Lewis Stockman, Dec. 2, 1970.)

JA9

**Exhibit 1 Annexed to Petition for Removal
Summons**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.

U.S. PLYWOOD-CHAMPION PAPERS, INC., *Plaintiff*
against
CONTINENTAL CASUALTY COMPANY,
Defendant

Plaintiff designates New York County as the place of trial.

The basis of the venue is the residence of the plaintiff.

Plaintiff resides at 777 Third Avenue, New York, County of New York.

To the above named Defendant

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure

JA10

Exhibit 1 Annexed to Petition for Removal

to appear or answer, judgment will be taken against you
by default for the relief demanded in the comp'laint.

Dated, New York, N.Y.
November 23, 1970

KRONISH, LIEB, SHAINSWIT,
WEINER & HELLMAN
Attorneys for Plaintiff
Office and Post Office Address
1345 Avenue of the Americas
New York, N.Y. 10019
Tel. No. (212) 765-6000

Exhibit 1 Annexed to Petition for Removal

Verified Complaint

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

[SAME TITLE]

Plaintiff, by its attorneys, Kronish, Lieb, Shainswit, Weiner & Hellman, for its verified complaint against the defendant, alleges:

1. Plaintiff, U.S. Plywood-Champion Papers Inc. ("Plywood"), is a corporation incorporated under the laws of the State of New York with its principal office in the State of New York located at 777 Third Avenue, New York, New York.
2. Defendant, Continental Casualty Company ("Continental Casualty"), is a corporation incorporated under the laws of the State of Illinois with its principal office in the State of New York located at 76 William Street, New York, New York.
3. On or about November 28, 1967, Continental Casualty issued an "Umbrella Excess Third Party Liability Policy" (hereafter referred to as Continental Casualty's "Umbrella Excess Liability" policy) to Plywood under which Continental Casualty agreed to pay Plywood sums which Plywood became liable to pay through adjudication or compromise for property damage taking place during the period from November 30, 1967, through November 30, 1970, together with Plywood's expenses for the litigation, settlement, adjustment or investigation of Plywood's liability for such property damage, in excess of the amount recoverable by Plywood for such sums and expenses under

Exhibit 1 Annexed to Petition for Removal

a general liability policy issued by Liberty Mutual Insurance Company to Plywood or under any renewal or replacement thereof.

4. During the effective period of Continental Casualty's Umbrella Excess Liability policy Plywood purchased vinyl-covered panels from Continental Vinyl Products Corp. and resold these panels in the ordinary course of its business.

5. The vinyl-covered panels purchased from Continental Vinyl Products Corp. and resold by Plywood were defective. After these panels were used to manufacture completed products such as mobile homes and houseboats, and during the effective period of Continental Casualty's Umbrella Excess Liability policy, the vinyl film on these panels peeled away from the underlying substrate to which the vinyl film had been attached, thereby causing property damage within the coverage of Continental Casualty's Umbrella Excess Liability policy.

6. Plywood has been and still is exposed to liability for property damage taking place during the effective period of Continental Casualty's Umbrella Excess Liability policy as a result of the delamination of these defective vinyl-covered panels purchased by Plywood from Continental Vinyl Products Corp. and resold by Plywood in the ordinary course of its business.

7. With the knowledge and consent of Continental Casualty, Plywood has employed Liberty Mutual Insurance Company to investigate and settle Plywood's liability for property damage due to the delamination of these defective vinyl-covered panels and Continental Casualty has agreed that Plywood's rights under Continental Casualty's Umbrella Excess Liability policy will not be prejudiced by

Exhibit 1 Annexed to Petition for Removal

the investigation and settlement by Liberty Mutual Insurance Company of Plywood's liability for this property damage.

8. Through on or about October 22, 1970, \$433,463.43 has been paid in settlement of Plywood's liability for property damage due to the delamination of these defective vinyl-covered panels and \$50,841.52 has been paid for Plywood's expenses for the investigation, adjustment and settlement of Plywood's liability for this property damage.

9. The sum of \$100,000 is the maximum amount recoverable by Plywood from Liberty Mutual Insurance Company for all sums paid in settlement of Plywood's liability for property damage due to the delamination of these defective vinyl-covered panels and for Plywood's expenses for the investigation, adjustment and settlement of Plywood's liability for this property damage, under the general liability policy issued by Liberty Mutual Insurance Company to Plywood and under the renewal or replacement of said general liability policy.

10. By reason of the foregoing, Continental Casualty is obligated to pay Plywood the sum of \$348,304.95, with appropriate interest. Continental Casualty is also obligated to pay Plywood any further sums Plywood may become obligated to pay by reason of the adjudication or compromise of Plywood's liability for property damage due to the delamination of these defective vinyl-covered panels during the effective period of Continental Casualty's Umbrella Excess Liability policy, together with Plywood's additional expenses for the investigation, adjustment and settlement of Plywood's additional liability for this property damage.

Exhibit 1 Annexed to Petition for Removal

11. Continental Casualty has advised and informed Plywood that Continental Casualty will not pay to Plywood the sums paid by Plywood for the settlement of Plywood's liability for property damage due to the delamination of these defective vinyl-covered panels and will not pay to Plywood Plywood's expenses for the investigation, adjustment and settlement of Plywood's liability for this property damage.

WHEREFORE plaintiff seeks judgment against the defendant awarding plaintiff the recovery of \$384,304.95, together with the award of the additional sums Plywood may become obligated to pay by reason of the adjudication or compromise of Plywood's liability for property damage taking place within the effective period of Continental Casualty's Umbrella Excess Liability policy, together with Plywood's additional expenses for the litigation, adjustment, settlement or investigation of Plywood's liability for such property damage, up to the date of the trial of this action, together with appropriate interest and the costs and disbursements of this action.

Dated: New York, N. Y.
November 20, 1970

KRONISH, LIEB, SHAINSWIT,
WEINER & HELLMAN
Attorneys for Plaintiff

(Verified by Marvin Ginsky, Nov. 20, 1970.)

JA15

Answer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHAMPION INTERNATIONAL CORPORATION,
Plaintiff,
against
CONTINENTAL CASUALTY COMPANY,
Defendant.

Defendant Continental Casualty Company ("Continental"), by its attorneys, Hart & Hume, for its answer to the complaint, alleges:

1. Denies each and every allegation contained in paragraph "2" of the complaint except admits that defendant is a corporation incorporated under the laws of the State of Illinois and maintains its principal place of business in Chicago, Illinois.
2. Denies each and every allegation contained in paragraph "3" of the complaint except admits that on or about November 28, 1967, defendant issued its Umbrella Excess Third Party Liability Policy Number RDU 9397904 ("Umbrella Policy") to plaintiff covering the period from November 30, 1967 to November 30, 1970; defendant begs leave to refer to the original of said Umbrella Policy for the exact terms and conditions thereof.
3. Denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained

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Answer

in paragraphs "4", "5" and "6" of the complaint, except denies that said alleged property damage is within the coverage of said Umbrella Policy.

4. Denies each and every allegation contained in paragraphs "7", "9" and "10" of the complaint.

5. Denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph "8" of the complaint.

6. Denies each and every allegation contained in paragraph "11" of the complaint except admits that defendant has declined to pay any amounts demanded by plaintiff under said Umbrella Policy.

First Affirmative Defense

7. Under the provisions of said Umbrella Policy, defendant agreed, subject to the terms and conditions thereof, to indemnify plaintiff, *inter alia*, for all sums which plaintiff should become obligated to pay by reason of liability imposed by law upon plaintiff for property damage caused by or arising out of each occurrence during the policy period, limited to the ultimate net loss in excess of the amount recoverable under underlying insurance as set forth in a schedule included in said Umbrella Policy.

8. At all times mentioned in the complaint, there was in full force and effect a comprehensive general liability policy, or renewal or replacement thereof, issued to plaintiff by Liberty Mutual Insurance Company and included in the schedule of underlying insurance in said Umbrella Policy.

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Answer

9. Upon information and belief, the coverage afforded plaintiff by said underlying insurance has not been and will not be exhausted in respect of the matters alleged in the complaint.

Second Affirmative Defense

10. Said Umbrella Policy provides in paragraph "11" of the conditions thereof, as follows:

"If other collectible insurance with any other insurer is available to the Insured covering a loss covered hereunder, this insurance shall be in excess of, and shall not contribute with such other insurance."

11. Upon information and belief, in respect of the matters alleged in the complaint, other collectible insurance is available to plaintiff under a policy issued by Glens Falls Insurance Company to the manufacturer of the allegedly defective panels, Continental Vinyl Products Corporation.

12. Upon information and belief, the coverage afforded plaintiff by the insurance referred to in paragraph "8" hereof and by the insurance referred to in paragraph "11" hereof has not been and will not be exhausted in respect of the matters alleged in the complaint.

Third Affirmative Defense

13. Said Umbrella Policy, in paragraph "2" of the insuring agreements thereof, provides as follows:

"The Company shall only be liable for the ultimate net loss in excess of * * * the amount recover-

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Answer

able under underlying insurance as set out in the attached schedule * * *

14. Said Umbrella Policy, paragraph "7" of the definitions thereof, defines the term "ultimate net loss" as excluding the following:

"* * * salaries of employees and office expenses of the insured or of any underlying insurer. * * *"

15. Upon information and belief, a substantial part of plaintiff's claim herein is for salaries of employees and office expenses of an underlying insurer, Liberty Mutual Insurance Company.

WHEREFORE, defendant Continental Casualty Company demands judgment dismissing plaintiff's complaint, together with the costs and disbursements of this action.

Hart & Hume
Attorneys for Defendant

By /s/ Jack Hart
A Member of the Firm

JA19

**Plaintiff's Answers and Objections
to Defendant's Interrogatories**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff, U.S. Plywood-Champion Papers, Inc. ("Plywood"), submits the following answers and reasons for objections to the interrogatories of defendant, Continental Casualty Company:

Interrogatory 1: IDENTIFY THE UMBRELLA EXCESS THIRD PARTY LIABILITY POLICY REFERRED TO IN PARAGRAPH "3" OF THE COMPLAINT, GIVING THE POLICY NUMBER OF SAID POLICY AND THE PRESENT CUSTODIAN OF THE ORIGINAL OF SAID POLICY, OR, IF YOU ARE WILLING TO DO SO WITHOUT A REQUEST FOR PRODUCTION AND INSPECTION PURSUANT TO RULE 34, SET FORTH A TRUE COPY OF THE POLICY.

Answer to Interrogatory 1: The policy number of the Umbrella Excess Third Party Liability Policy referred to in paragraph "3" of the complaint is RD 9397904. The present custodian of the original of that policy is Mr. William E. Wynne, Director of Risk Management of U. S. Plywood-Champion Papers, Inc.

Interrogatory 2: IDENTIFY EACH AND EVERY UNDERLYING GENERAL LIABILITY POLICY ISSUED BY LIBERTY MUTUAL INSURANCE COMPANY REFERRED TO IN PARAGRAPH "3" OF THE COMPLAINT, INCLUDING ANY

Plaintiff's Answers and Objections

RENEWALS OR REPLACEMENTS THEREOF, STATING AS TO EACH SUCH POLICY THE POLICY NUMBER, THE POLICY PERIOD AND THE PRESENT CUSTODIAN OF THE ORIGINAL OF SAID POLICY, OR, IF YOU ARE WILLING TO DO SO WITHOUT A REQUEST FOR PRODUCTION AND INSPECTION PURSUANT TO RULE 34, SET FORTH A TRUE COPY OF EACH SUCH POLICY.

Answer to Interrogatory 2: The policy numbers and policy periods requested in Interrogatory 2 are:

<i>Number</i>	<i>Period</i>
LG 1-621-004152-067	10/31/67 to 10/31/68
LG 1-621-004152-068	10/31/68 to 10/31/69
LG 1-621-004152-069	10/31/69 to 10/31/70

The present custodian of the original of each of these policies is Mr. William F. Wynne, Director of Risk Management of U. S. Plywood-Champion Papers, Inc.

Interrogatory 3: STATE WHETHER PLAINTIFF WAS AN INSURED, BY VENDORS ENDORSEMENT OR OTHERWISE, IN ANY POLICY OF INSURANCE ISSUED BY THE GLENS FALLS INSURANCE COMPANY, OR ANY OTHER INSURER, TO CONTINENTAL VINYL CORPORATION AND, IF SO, IDENTIFY EACH AND EVERY SUCH POLICY, STATING AS TO EACH THE NAME AND ADDRESS OF THE INSURER, THE POLICY NUMBER, THE POLICY PERIOD AND WHETHER YOU HAVE IN YOUR POSSESSION A COPY OF SAID POLICY OR, IF YOU ARE WILLING TO DO SO WITHOUT A

Plaintiff's Answers and Objections

REQUEST FOR PRODUCTION AND INSPECTION PURSUANT TO RULE 34, SET FORTH A TRUE COPY OF EACH SUCH POLICY.

Answer to Interrogatory 3: Plaintiff is informed and believes that true copies of pages of a policy of insurance apparently issued by The Glens Falls Insurance Company to Continental Vinyl Products Corporation is attached hereto in Appendix 1. Plywood has no knowledge or information as to any other policy of insurance issued by The Glens Falls Insurance Company, or issued by any other insurer, to Continental Vinyl Products Corporation.

Interrogatory 4: STATE WHETHER PLAINTIFF WAS INSURED IN RESPECT OF ITS LIABILITY FOR THE PROPERTY DAMAGE REFERRED TO IN THE COMPLAINT BY ANY POLICY OF INSURANCE OTHER THAN THE POLICIES IDENTIFIED OR SET FORTH IN RESPONSE TO INTERROGATORIES "1", "2" AND "3", AND, IF SO, IDENTIFY EACH AND EVERY SUCH POLICY, STATING AS TO EACH THE NAME OF THE INSURER, THE POLICY NUMBER, THE POLICY PERIOD AND THE PRESENT CUSTODIAN OF THE ORIGINAL OF SAID POLICY, OR, IF YOU ARE WILLING TO DO SO WITHOUT A REQUEST FOR PRODUCTION PURSUANT TO RULE 34, SET FORTH A TRUE COPY OF EACH AND EVERY SUCH POLICY OF INSURANCE.

Answer to Interrogatory 4: No.

Interrogatory 5: AS TO EACH AND EVERY CLAIM MADE AGAINST PLAINTIFF IN RESPECT OF PROPERTY DAMAGE ALLEGED IN THE COMPLAINT:

Plaintiff's Answers and Objections

(A) IDENTIFY THE CLAIMANT AND, IF OTHER THAN THE CLAIMANT, IDENTIFY THE OWNER OF THE PROPERTY DAMAGED;

(B) STATE THE AMOUNT OF THE CLAIM;

(C) STATE THE AMOUNT PAID BY OR ON BEHALF OF PLAINTIFF IN ADJUSTMENT, SETTLEMENT OR COMPROMISE OF THE CLAIM;

(D) DESCRIBE THE PROPERTY DAMAGED AND THE NATURE AND EXTENT OF THE DAMAGE;

(E) STATE THE LOCATION OF THE PROPERTY WHEN DAMAGED;

(F) STATE THE APPROXIMATE DATE THAT THE DAMAGE TO THE PROPERTY OCCURRED;

(G) IDENTIFY EACH AND EVERY COMMUNICATION RELATING TO THE (1) MAKING, (2) INVESTIGATION AND (3) ADJUSTMENT, SETTLEMENT OR COMPROMISE OF THE CLAIM;

(H) DESCRIBE THE VINYL COVERED PANEL OR PANELS WHICH CAUSED THE DAMAGE, INCLUDING THE TYPE AND COLOR AND ANY IDENTIFYING LOT NUMBER OR OTHER DESIGNATION, THE DATE PLAINTIFF PURCHASED SAID PANELS FROM CONTINENTAL VINYL CORP., THE DATE OF RESALE BY PLAINTIFF OF SAID PANELS AND THE NAME AND ADDRESS OF THE PURCHASER OF SAID PANELS FROM PLAINTIFF;

Plaintiff's Answers and Objections

(I) IDENTIFY EACH AND EVERY COMMUNICATION RELATING TO THE PURCHASE AND RESALE BY PLAINTIFF OF THE SAID PANELS:

Objections to Interrogatory 5(a) through (i): Plaintiff objects to subparagraphs (a) through (i) of interrogatory 5 insofar as they require a burdensome compilation of extensive details which must be derived almost entirely from documents and records maintained by Liberty Mutual Insurance Company. As of March 22, 1971, a total of \$645,019.61 has been paid in settlement of Plywood's liability for the property damage referred to in the complaint. A list of each payment included in this aggregate amount, identifying each person who received each payment, specifying the date of issuance and the number of each check through which each payment was made, and stating the amount of each payment, is attached hereto in Appendix 2. The additional information requested by the defendant may be found, to the extent it is available to the plaintiff, in (1) documents and records maintained by Liberty Mutual Insurance Company, plaintiff's agent for the investigation, settlement and payment of these claims, and (2) documents and records in the possession or control of plaintiff. These documents and records will be produced and made available for inspection and copying by the defendant or its attorneys at a mutually convenient time and place.

Interrogatory 5(J): STATE WHETHER PLAINTIFF MADE CLAIM IN RESPECT OF ITS LIABILITY FOR SUCH PROPERTY DAMAGE UNDER ANY POLICY OF INSURANCE OTHER THAN DEFENDANT'S UMBRELLA EXCESS THIRD PARTY LIABILITY POLICY REFERRED TO IN THE COMPLAINT AND, IF SO,

Plaintiff's Answers and Objections

IDENTIFY THE INSURER TO WHICH AND THE POLICY UNDER WHICH CLAIM WAS MADE, THE DATE CLAIM WAS MADE, AND THE DISPOSITION OF SAID CLAIM.

Answer to Interrogatory 5(j): Plaintiff made a claim in respect of its liability for the property damage referred to in the complaint in respect of such property damage as came to the attention of the plaintiff from on or about October of 1969 under the Liberty Mutual Insurance Company policies then in effect, identified in response to interrogatory 2. Liberty Mutual Insurance Company has paid \$100,000 pursuant to the insurance coverage afforded to Plywood under those policies.

Interrogatory 6: STATE THE EXACT TERMS OF PLAINTIFF'S EMPLOYMENT OF LIBERTY MUTUAL INSURANCE COMPANY REFERRED TO IN PARAGRAPH "7" OF THE COMPLAINT, INCLUDING BUT NOT LIMITED TO, (A) THE SCOPE OF AUTHORITY GRANTED LIBERTY MUTUAL INSURANCE COMPANY TO SETTLE AND PAY CLAIMS AGAINST PLAINTIFF AND (B) THE BASIS OF COMPENSATION OF LIBERTY MUTUAL INSURANCE COMPANY. IDENTIFY EACH AND EVERY COMMUNICATION ESTABLISHING OR SETTING FORTH THE TERMS OF SAID EMPLOYMENT.

Answer to Interrogatory 6: Copies of written communications establishing or setting forth the terms of Liberty Mutual's employment by plaintiff are attached hereto in Appendix 3. According to the attached letter, dated April 17, 1970, from W.F. Wynne, Plywood's Director of Risk Management, to F. G. Mason, Division Claims Service Manager of Liberty Mutual, Liberty Mutual's fee to Plywood,

Plaintiff's Answers and Objections

as of that date, was to be "between 15% and 20% of the actual claim settlement." On or about June 16, 1970, Mr. Mason orally informed Mr. Wynne that Liberty Mutual's fee would be 15%. This oral communication took place at the offices of the plaintiff. Plaintiff is informed and believes that E. W. Franz, an account executive of Liberty Mutual, and John Clarson, Treasurer of U. S. Plywood-Champion Papers, Inc., were present when this oral communication was made.

Interrogatory 7: IDENTIFY EACH AND EVERY COMMUNICATION BY WHICH DEFENDANT WAS ALLEGEDLY APPRISED OF THE FACT THAT PLAINTIFF HAD EMPLOYED LIBERTY MUTUAL INSURANCE COMPANY TO INVESTIGATE AND SETTLE PLAINTIFF'S LIABILITY FOR THE PROPERTY DAMAGE ALLEGED IN THE COMPLAINT.

Answer to Interrogatory 7: Copies of the communications now known to plaintiff by which the defendant was apprised of the fact that the plaintiff had employed Liberty Mutual to investigate and settle plaintiff's liability for the property damage alleged in the complaint are attached hereto in Appendix 3.

Interrogatory 8: IDENTIFY EACH AND EVERY COMMUNICATION CONSTITUTING THE ALLEGED CONSENT OF DEFENDANT TO PLAINTIFF'S EMPLOYMENT OF LIBERTY MUTUAL INSURANCE COMPANY TO INVESTIGATE AND SETTLE PLAINTIFF'S LIABILITY FOR THE PROPERTY DAMAGE ALLEGED IN THE COMPLAINT.

Plaintiff's Answers and Objections

Answer to Interrogatory 8: On April 17, 1970, plaintiff was advised by telegram that:

"Continental Casualty Company has agreed that coverage under their policy is not prejudiced by your contracting with the Liberty to continue the settlement of claims involving the Continental Vinyl matter."

A true copy of this telegram, constituting the defendant's consent to the plaintiff's employment of Liberty Mutual Insurance Company to investigate and settle plaintiff's liability for the property damage alleged in the complaint, is included in chronological order in the correspondence and other documents attached hereto in Appendix 3. A copy of each letter attached hereto in Appendix 3 was promptly forwarded to representatives of the defendant on or shortly after the date of each such letter. The defendant's failure to object to the plaintiff's employment of Liberty Mutual Insurance Company as set forth in those letters confirmed the defendant's consent to the plaintiff's employment of Liberty Mutual Insurance Company.

Interrogatory 9: IDENTIFY EACH AND EVERY COMMUNICATION CONSTITUTING THE ALLEGED AGREEMENT OF DEFENDANT THAT PLAINTIFF'S RIGHTS UNDER DEFENDANT'S UMBRELLA EXCESS THIRD PARTY LIABILITY POLICY WOULD NOT BE PREJUDICED BY THE INVESTIGATION AND SETTLEMENT BY LIBERTY MUTUAL INSURANCE COMPANY OF PLAINTIFF'S LIABILITY FOR THE PROPERTY DAMAGE ALLEGED IN THE COMPLAINT.

Answer to Interrogatory 9: The communication of the advice set forth in plaintiff's response to interrogatory 8 constituted the defendant's agreement that plaintiff's rights

Plaintiff's Answers and Objections

under the defendant's Umbrella Excess Third Party Liability Policy would not be prejudiced by Liberty Mutual's investigation and settlement of plaintiff's liability for the property damage referred to in the complaint. The defendant was kept constantly informed of Liberty Mutual's investigation and settlement of plaintiff's liability for this property damage through the receipt of copies of the letters attached hereto in Appendix 3. The defendant's failure to object to Liberty Mutual's investigation and settlement of plaintiff's liability confirmed the defendant's agreement that plaintiff's rights under the defendant's policy would not be prejudiced by the plaintiff's employment of Liberty Mutual for this purpose.

Interrogatory 10: IF THE SUMS SET FORTH IN RESPONSE TO INTERROGATORY "5(c)" DO NOT TOTAL THE SUM OF \$433,463.43 REFERRED TO IN PARAGRAPH "8" OF THE COMPLAINT, DESCRIBE IN DETAIL THE MANNER IN WHICH PLAINTIFF COMPUTES SAID SUM OF \$433,463.43.

Answer to Interrogatory 10: As explained in response to interrogatory 5, as of March 22, 1971, a total of \$645,019.61 has been paid in settlement of plaintiff's liability for the property damage referred to in the complaint. A list of the payments comprising this amount, identifying each person who received each payment, specifying the date of issuance and the number of each check through which each payment was made, and stating the amount of each payment, is attached hereto in Appendix 2.

Interrogatory 11: AS TO EACH AND EVERY PAYMENT COMPRISING THE TOTAL SUM OF \$50,841.52 REFERRED TO IN PARAGRAPH "8" OF THE COMPLAINT, IDENTIFY THE RE-

Plaintiff's Answers and Objections

CIPIENT OF SAID PAYMENT, STATE THE AMOUNT OF SAID PAYMENT AND THE DATE THEREOF, AND DESCRIBE THE SERVICES PERFORMED THEREFOR; AND IDENTIFY EACH AND EVERY WRITING, INCLUDING BILLINGS, RELATING TO EACH SUCH PAYMENT.

Answer to Interrogatory 11: As of March 22, 1971, the sum referred in interrogatory 11, Plywood's expenses for the investigation, adjustment and settlement of Plywood's liability for the property damage referred to in the complaint, totaled \$92,565.27. A list of each payment comprising this amount, identifying each person who received each payment, specifying the date of issuance and the number of each check through which payment was made, and stating the amount of each payment, is attached hereto in Appendix 2. The services performed therefor were the appraisal and adjustment of claims for the property damage referred to in the complaint. Documents relating to such payments and services will be produced and made available for inspection and copying by the defendant or its attorneys at a mutually convenient time and place.

Interrogatory 12: DESCRIBE IN DETAIL THE MANNER IN WHICH THE AMOUNT ALLEGEDLY RECOVERABLE FROM LIBERTY MUTUAL INSURANCE COMPANY IS COM-
PUTED TO BE \$100,000; IDENTIFY THE POLICY OR POLICIES UNDER WHICH SAID AMOUNT IS ALLEGEDLY RECOVERABLE AND THE CLAUSES OF SAID POLICY OR POLICIES ALLEGEDLY LIMITING THE AMOUNT RECOVERABLE TO \$100,000.

Answer to Interrogatory 12: The limit of Liberty Mutual's liability for property damage liability in the policies

Plaintiff's Answers and Objections

identified in response to interrogatory 2 is stated to be \$100,000 for each occurrence (Item 3 of Declarations) and the property damage referred to in the complaint arose out of one occurrence.

Interrogatory 13: IF PLAINTIFF CONTENTS THAT ALL PROPERTY DAMAGE ALLEGED IN THE COMPLAINT AROSE OUT OF "CONTINUOUS OR REPEATED EXPOSURE TO SUBSTANTIALLY THE SAME GENERAL CONDITIONS", DESCRIBE IN DETAIL THE NATURE OF SAID CONDITIONS, THE LOCATION OF SAID CONDITIONS, THE DATE SAID CONDITIONS COMMENCED AND THE DURATION OF SAID CONDITIONS.

Answer to Interrogatory 13: The property damage referred to in the complaint arose out of the manufacture of defective vinyl-covered panels by Continental Vinyl Products Corp. at 5015 District Boulevard, Vernon, California, and the delamination of those panels in products manufactured by plaintiff's customers. Plaintiff does not know when Continental Vinyl Products Corp. commenced or completed the manufacture of these defective panels. The process of delamination of these defective panels began in or shortly after October 1969 and complaints of property damage arising from this occurrence are still being received.

Interrogatory 14: IF NOT INCLUDED IN THE RESPONSE TO INTERROGATORY "5", SET FORTH EACH AND EVERY CLAIM MADE AGAINST PLAINTIFF SUBSEQUENT TO OCTOBER 22, 1970 IN RESPECT OF PROPERTY DAMAGE ALLEGED IN THE COMPLAINT, STATING AS TO EACH SUCH CLAIM THOSE ITEMS OF INFORMATION REQUIRED IN INTERROGATORY "5".

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Plaintiff's Answers and Objections

Answer to Interrogatory 14: See plaintiff's response to interrogatory 5, which includes information as to all claims made against plaintiff through March 22, 1971.

Interrogatory 15: IDENTIFY EACH AND EVERY COMMUNICATION BETWEEN PLAINTIFF AND LIBERTY MUTUAL INSURANCE COMPANY IN RESPECT OF THE COVERAGE AND LIMITS OF LIABILITY OF THE GENERAL LIABILITY POLICY REFERRED TO IN PARAGRAPH "3" OF THE COMPLAINT, AND ANY RENEWAL OR REPLACEMENT THEREOF, CONCERNING PLAINTIFF'S LIABILITY FOR THE PROPERTY DAMAGE ALLEGED IN THE COMPLAINT.

Answer to Interrogatory 15: True copies of communications establishing or setting forth the determination by Liberty Mutual Insurance Company of the coverage and limits of liability of the general liability policy, and any renewal or replacement thereof, referred to in paragraph "3" of the complaint, concerning plaintiff's liability for the property damage alleged in the complaint, are attached hereto in Appendix 4. Plaintiff objects to interrogatory 15 insofar as it demands the identification of communications which do not establish or set forth this determination on the ground that such communications are not relevant to the subject matter of this action and their identification is not reasonably calculated to lead to the discovery of admissible evidence in this action.

Dated: New York, New York
May 26, 1971

U. S. PLYWOOD-CHAMPION PAPERS, INC.
By Marvin Ginsky
Assistant Secretary

(Verified by Marvin Ginsky, May 26, 1971.)

JA30

**Appendix 2 Annexed to Plaintiff's Answers and
Objections to Defendant's Interrogatories**

(Page JA31)



Schedule 1 identifies each person who received a payment through March 22, 1971, in settlement of Plywood's liability for the property damage referred to in the complaint. This list also specifies the date of issuance and the number of each check through which payment was made, and the amount of each payment. Payments marked with an asterisk are those made under Plywood's underlying insurance policy with Liberty Mutual.

Schedule 2 identifies each person, other than Liberty Mutual Insurance Company, who received a payment through March 22, 1971, for services rendered in connection with the investigation, adjustment and settlement of Plywood's liability for the property damage referred to in the complaint. This list also specifies the date of issuance and the number of each check through which payment was made, and the amount of each payment. Payments marked with an asterisk are those made under Plywood's underlying insurance policy with Liberty Mutual. As of March 22, 1971, Plywood has made the following payments to Liberty Mutual for the sum paid out by Liberty Mutual above the limit of Liberty Mutual's liability and for payment of Liberty Mutual's fee of 15% of this sum for the investigation, adjustment and settlement of Plywood's liability for the property damage referred to in the complaint:

<u>Check Number</u>	<u>Date</u>	<u>Amount</u>
6-14109	May 12, 1970	\$225,000.00
6-14361	July 9, 1970	100,000.00
6-14510	Aug. 27, 1970	100,000.00
6-14877	Dec. 1, 1970	100,000.00
6-15087	Jan. 28, 1971	100,000.00



JA32

**Appendix 2: Schedule 1 Annexed to Plaintiff's
Answers and Objections to Defendant's
Interrogatories**

(Pages JA33 to JA53)



LOSS

#7202-195671 R

Cobra Industries (Various)

<u>Creditor and/or Name</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
Cobra Industries	E1-10266	3-24-70	\$ 77,462.92*
Cobra Industries	E1-180	4- 9-70	1,500.00*
Don Allen Walker	E1-182	55-25-70	1,000.00
H. H. Company Trailers	E1-187	5-26-70	2,179.20
Cobra Industries	E1-20059	6-15-70	103,799.79
Cobra Industries	E1-21257	7-22-70	20,655.00
Cobra Industries	E1-21700	8-13-70	14,561.23
Greg Hodges	E1-520	8-17-70	2,851.50
Cobra Industries	E1-22027	10- 9-70	15,099.80
Bulger's Trailer Center	E1-56135	10-26-70	1,083.50
Cobra Industries	E2-59023	11-17-70	6,341.96
Hillard Brady	E1-56163	11- 5-70	700.00
Lawrence De Sandp	E1-94501	11-13-70	920.00
Bulger's Trailer	E1-94551	11-20-70	1,465.00
Bulger's Trailer	E1-94556	11-20-70	962.00
W. F. Owen	E1-94569	12- 2-70	1,100.00
Catalina Trailer Sales	E1-94673	12-23-70	1,100.00
Thomas Reader	E1-94679	12-26-70	300.00
Gannoy Company Inc.	E1-94677	12-26-70	400.00
Robert & Mariol Church	E1-56133	10-26-70	1,000.00
Larry's Trailers Inc.	E1-94514	12- 1-71	1,391.50
Cobra Industries	E1-25597	1-25-71	7,715.53
Bell Campground Inc.	E1-94646	2- 8-71	942.05
Arthur S. Babin	E1-94690	2- 8-71	1,200.00
Greg Hodges	E1-94989	3- 8-71	1,717.00
Cobra Industries	E1-95010	3-12-71	3,104.00
Total			\$271,008.07

ONLY COPY AVAILABLE



LOSS

#P202-195672R

Nauta Line (Various)

Claimant and/or PayeeCheck #Date IssuedAmount

1. Ullian	E2-21715	3-19-70	\$ 980.00*
2. Bruce Roberts	E929-338	3-16-70	2,904.90*
3. Lake Dallas	E9-2366	3-19-70	3,650.50*
4. Gregg Aviation	E9-2317	3-17-70	2,725.00*
5. Cannon Boat	E5-10583	4- 3-70	1,220.35*
6. Shore Acres Boat	E4-22862	4- 2-70	530.00*
7. William J. Little	E1-10800	4-14-70	2,450.00*
8. William J. Little	E3-35002	4- 9-70	5,400.00*
9. Shores Acres Boat	E5-47794	7-14-70	1,456.84
10. Stanley Werner	E5-22996,7	8-21-70	1,496.35
11. Donald M. Bay	E2-57183	8-31-70	952.75
12. Perryville Marina	E544-38314	5- 5-70	820.00*
13. E. & E. Bordanaro	E669-3221	5-13-70	1,787.83*
14. Dean Anderson	E669-25978	4-28-70	1,574.08*
15. Dean Anderson	E669-25979	4-28-70	1,574.08*
16. Dean Anderson	E202-3754	5-10-70	1,574.08*
17. G. M. De Costa	E1-2552	5-20-70	735.00*
18. J. & J. Watson	E2-29602	6- 1-70	1,337.97*
19. Woodland Marina Inc.	E202-3999	5-22-70	800.00*
20. J. F. Martin & C. D. Ramsden	E2-29674	6- 3-70	1,337.97*
21. Great Lake Marine Inc.	E4-447	6- 5-70	1,350.00
22. A. & B. Hewett	E2-55327	6-16-70	1,337.97
23. Dana Marina	E2-55657	6-30-70	289.00
24. Natalie Hittle	E2-58816	11- 9-70	650.00

Cont.

LOSS

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#P202-195672 R

Nauta Line (Various)

	<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
25.	David Samson	E2-55701	7- 1-70	\$ 1,382.00
26.	South Jersey Marina	E2-55820	7- 7-70	1,695.00
27.	R. R. Glaesner	E2-55821	7- 7-70	300.00
28.	H. A. Widick	E2-55822	7- 7-70	1,200.00
29.	Jerry Redford	E2-56986	8-20-70	1,769.70
30.	A. & R. Nugent	E2-56985	8-20-70	1,831.18
31.	Michael Collins	E2-56984	8-20-70	1,631.14
32.	Parker Boat Company	E5-45767	7-16-70	340.00
33.	G. & M. Schauerte	E502-4609	5-28-70	1,455.62
34.	Osmond J. Young	E975-9008	4-15-70	1,825.00*
35.	J. H. Carroll	E502-4344	4-24-70	1,185.32*
36.	R. O. Billker, Sr.	E2-57367,8	9- 8-70	936.00
37.	Parker Boat Company	E5-45676	7- 7-70	400.00
38.	Sunshine State	E5-48244	9-10-70	1,017.63
39.	Leslie Huffstetler	E2-57601	9-21-70	1,200.00
40.	M. W. Rothenbaugh, Inc.	E5-2309	9-11-70	742.50
41.	Kenneth Hayes	E2-57955	10- 2-70	973.00
42.	R. Merle Alwine	E2-58192	10-14-70	1,000.00
43.	M. & L. Edinger	E2-55329	6-16-70	1,120.00
44.	R. & M. Lee =	E2-55328	6-16-70	1,120.00
45.	Recreation Unlimited Inc.	E2-55330	6-16-70	1,120.00
46.	D. & R. Thompson	E2-55426	6-22-70	800.00
47.	A. W. Schroeder	E2-55657	6-30-70	2,120.11

LOSS

#P202-195672

<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
Nauta Line (Various)			
Lan Mar Marina	E2-58306	10-16-70	\$ 3,274.00
W. L. Gibbs	E2-58477	10-26-70	1,594.76
J. Dawson Provance	E2-58479	10-26-70	1,215.00
Engles Holiday Harbor	E2-58478	10-26-70	1,810.00
James V. Smyrnes	E2-58593	11- 2-70	1,234.000
Henry Schloss	E2-58480	10-26-70	1,000.00
Amistad Houseboats	E2-58592	11- 2-70	1,396.00
Aloha Marina	E2-58817	11- 9-70	955.61
G. & D. Tinsley	E2-58818	11- 9-70	1,185.32
Brennan Cruiser	E2-58819	11- 9-70	4,016.00
John Lunquist	E2-59300	11-25-70	1,562.50
Estate of Earl P. Koener	E2-58396	10-21-70	950.00
By-Ryt Supermarket #3	E2-59447	12- 2-70	90.06
Nauta Line, Inc.	E1-20948	7-10-70	13,689.24
Andrew White	E5-48864	12- 1-70	1,552.88
Akers Marine	E2-59739	12-11-70	1,500.00
Q. K. Perkins	E2-55934	12-18-70	1,250.00
Harry Baer	E2-59933	12-18-70	11,250.00
Don Taylor	E2-97562	12-22-70	1,455.62
Sports Manor Marine	E2-97793	1- 4-71	1,400.00
Raymond Bovich	E2-97794	1- 4-70	3,000.00
Almar-York Inc.	E2-97695	12-29-70	1,250.00
Edward Moushaw	E3-109176	11- 5-70	1,600.00
Lec. C. Hinds	E3-109831	12-17-70	2,450.00
Harold Doster	E2-98008	1-11-71	1,032.16

Cont.

LOSS

#P202-195672

Nauta Line (Various)

<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
Chesapeake Marine Service	E3-109837	12-17-70	\$ 1,000.00
Chesapeake Marine Service	E3-109835	12-17-70	1,000.00
Chesapeake Marine Service	E3-109836	12-17-70	1,000.00
R. H. Miller	E2-98175	1-18-71	1,417.18*
Edgar B. King	E2-98264	1-20-71	825.00
Nauta Line, Inc.	E1-24949	1- 4-71	20,326.21
Wilber Dagget	E2-98455	1-27-71	610.68
James O. Kondon Leasing	E2-98452	1-27-71	300.00
James O. Kondor Leasing	E2-98451	1-27-71	525.00
Almet Yacht Sales	E2-98453	1-27-71	2,000.00
Dickerson Marine Center	E2-100250	2- 4-71	542.60
Tugalo Development Corp.	E2-100357	2- 8-70	1,032.16
Kings Cove Inc.	E2-100358	2- 8-71	1,822.27
Timothy Mc Cadden	E2-100359	2- 8-71	850.00
Abe Mueller	E3-138274	2- 8-71	1,800.00
Kurt Miller	E2-100490	2-11-71	1,850.00
Fladd Cruiser Sales	E2-100563	2-16-71	800.00
Nelson Motor Company	E2-100589	2-17-71	1,025.11
Ward Price	E2-100560	2-17-71	850.00
John P. Lommen	E2-100816	2-26-71	1,410.83
Charles Storm	E2-100815	2-26-71	1,410.83
Jack Gardner	E2-100935	3- 5-71	1,250.00
Bert Hoyl	E2-100986	3- 5-71	1,250.00

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AF202-195672

Cont

1033

Nauta Line (Various)

Claimant and/or Payee

	<u>Check #</u>	<u>Date Received</u>	<u>Amount</u>
Dr. Robert White	E2-100937	3- 5-71	\$ 1,250.00
John Schultz	E2-101135	3-10-71	390.00
Nauta Line, Inc.	E1-27103	3-12-71	12,761.96
Carlo Langston	E1-27104	3-12-71	15,707.45
Marles Ford Company	E2-101363	3-18-71	1,200.00
Robert Dwyer	E2-101321	3-17-71	1,816.55
			<hr/>
	Total		\$195,833.85

LOSS

FP202-195005 R

Frame Art (Various)

	<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1.	Frame Art Inc.	E2-55067	6- 5-70	\$4,376.32
2.	Frame Art Inc.	E2-56054	10- 9-70	1,623.01
3.	Frame Art Inc.	E4-57850	2- 9-71	840.23
			<hr/>	
		Total		\$6,840.36

LOSS

#P202-195606

Frolic Homes (Various)

Check #Date IssuedAmount

1. Frolic Homes Inc.

E/-503

6-12-70

\$1,324.21

Total

\$1,324.21

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LOSS

1202-195007

Allstar Coach, Inc. (Various)

Claimant and/or Name

Check #

Date Issued

Amount

1. Allstar Coach, Inc.

E1-21170

7-17-70

\$79,421.61

2. Allstar Coach, Inc.

E1-23614

11- 3-70

9,613.32

Total

\$89,034.96

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LOSS

/P202-195008

Keystone Coach Manufacturing Co.
(Various)

<u>Claimant and/or Insurer</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1. Keystone Coach Manufacturing Co.	E1-21033	7-14-70	\$10,000.00
		Total	\$10,000.00

LOSS

#P202-195809

Banner Homes (Various)

	<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1.	Harold Platt	EL-820	8-31-70	\$1,300.00
2.	Dale A. Sweet	EL-200	4-29-70	500.00
3.	Banner Homes Corp.	EL-374	5-19-70	762.56
4.	Samuel Dorman	EL-441	5-23-70	1,894.00
5.	El W. Iowski	EL-94552	11-30-70	2,000.00
6.	Richard Christianson	EL-94547	2- 8-71	1,300.00
			<u>Total</u>	<u>\$7,756.56</u>

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LOSS

#P202-195811 R

Condor Coach (Various)

	<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1.	Condor Coach Corporation	E2-59032	11-17-70	\$ 890.94
2.	Anthony Gizzi	E2-59372	12-16-70	2,000.00
3.	Royal Inn of El Monk	E6-76306	12-28-70	243.40
4.	Condor Coach Corp.	E6-77632	1-26-71	1,887.18
			Total	<hr/> \$5,021.52

LOSS

Lofgren Manufacturing Co. (Various)

<u>Claimant and/or Invoice</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
✓ Dennis Harwood & Lofgren Manufacturing Company	E2-57372	9- 8-70	\$ 233.85
Ralph Taylor	E2-57914	10- 1-70	75.00
✓ Myron Hacking	E2-57915	10- 1-70	100.00
Elmer Gardner	E2-57916	10- 1-70	650.00
Lofgren Manufacturing Company	E2-57917	10- 1-70	67.00
Harden Nelson	E2-57918	10- 1-70	447.20
Lofgren Manufacturing Company	E2-57919	1- 1-70	52.80
✓ Ralph Hayes	E2-57956	10- 5-70	356.52
✓ Don Clement	E2-58305	10-16-70	450.00
✓ Larry Johnson	E2-58196	10-14-70	533.45
Karl Gunnell	E2-58398	10-21-70	150.00
Lofgren Manufacturing Company	E2-58399	10-21-70	206.40
✓ Joe Waglass	E2-58665	11- 4-70	519.85
✓ George Aingo	E2-58865	11-10-70	50.00
Earl Riggs	E2-58866	11-10-70	1154.00
Lofgren Manufacturing Company	E2-58867	11-10-70	30.20
✓ Glen D. Hersman	E2-58868	11-10-70	426.00
Lofgren Manufacturing Company	E2-59306	11-25-70	463.85
✓ Edney Distributing Company	E2-59307	11-25-70	100.00
✓ Edney Distributing Company	E2-59303	11-25-70	250.00
✓ Gerald George	E2-59209	11-25-70	400.00
✓ Daniel Lydalch-	E2-59740	12-11-70	718.05
✓ Glen H. Hildkelson	E2-59374	12-16-70	500.00

Cont.

2000

Lofgren Manufacturing Co. (Various)

Manufacturing Co.Invoice #Date InvoicedAmount

Clinton Snow	E2-77090	12-29-70	\$ 759.00
Ben C. Robert	E2-77052	1- 8-71	46.45
Lofgren Manufacturing Company	E2-77053	1- 8-71	770.05
Tar Sakurada	E2-78339	1-22-71	115.80
Clinton Drake	E2-100254	2- 4-71	725.00
David Mc Quillan	E2-100483	2-11-71	831.50
Larry H. Thompson	E2-100484	2-11-71	635.25
Charles Henderson	E2-100564	2-16-71	443.60
Lofgren Manufacturing Company	E2-100699	2-22-71	483.30
Lofgren Manufacturing Company	E2-100700	2-22-71	747.50
Vern Shepard	E2-100701	2-22-71	550.40
Victor Dimick	E2-100931	3- 3-71	205.00
Leland D. Grace	E2-101166	3-11-71	554.75
Lofgren Manufacturing Company	E2-100931	3- 5-71	40.95
Lynn Wright	E2-101282	3-16-71	1,031.75
Wayne Leak	E2-101282	3-16-71	819.00
Wayne Leak	E2-101285	3-16-71	819.00
		Total	\$17,423.27

JA 47

1033

6202-195E14 R

Ute Lines (Various)

	<u>Client and/or Party</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1.	Ute Lines Inc.	E2-57752	10- 2-70	\$ 120.85
2.	Ute Lines Inc.	E2-58303	10-16-70	47.46
3.	Ute Liner Inc.	E2-59026	11-17-70	385.95
4.	Ute Liner Inc.	E2-59027	11-17-70	465.20
5.	R. A. Peterson	E2-59445	12- 2-70	904.15
6.	Dr. Dan Hous	E2-100704	2-22-71	520.62
7.	Wallace Oliff	E2-100705	2-22-71	111.65
8.	Lou & Carolyn Ivie	E2-100706	2-22-71	350.00
			<u>Total</u>	<u>\$2,966.48</u>

LOSS

#P202-195515 R

Rancho Trailers Inc. (Various)

<u>Claimant and/or Party</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
Rancho Trailers Inc.	E2-3921	5-25-70	\$ 2,026.23
Louittit Trailer Co.	E2-29099	6-3-70	457.50
H. Rast	E2-56971	8-19-70	61.00
Rancho Trailers Inc.	E2-57630	9-22-70	875.00
Niko Fouridakis	E2-58173	10-12-70	1,250.00
Lloyd Sorenson	E2-58475	10-26-70	1,100.00
Howard & Louis Egan & Robert Simons	E2-58312	10-16-70	850.00
Edward Vigil	E2-58476	10-26-70	400.00
Rancho Trailers Inc.	E2-58862	11-10-70	535.00
Rancho Trailers Inc.	E2-58863	11-10-70	900.00
Rancho Trailers Inc.	E2-58864	11-10-70	1,350.00
Donald Alvey	E2-59025	11-17-70	729.12
Rancho Trailers Inc.	E2-59310	11-25-70	752.00
Rancho Trailers Inc.	E2-59311	11-25-70	1,275.00
Rancho Trailers Inc.	E2-59312	11-25-70	450.00
Larry Lyman	E2-59313	11-25-70	600.00
Rancho Trailers Inc.	E2-59741	12-11-70	650.00
Rancho Trailers Inc.	E2-59741	12-11-70	700.00
Rancho Trailers Inc.	E2-100982	3-5-71	620.50
Rancho Trailers Inc.	E2-100983	3-5-71	600.00
Rancho Trailers Inc.	E2-100984	3-5-71	600.00
Rancho Trailers Inc.	E2-101206	3-16-71	1,200.00
Rancho Trailers Inc.	E2-101207	3-16-71	149.00
Total			\$18,412.65

LOS3

PT202-195316 B

Travco Corporation (Various)

Claimant and/or PayeeCheck #Date IssuedAmount

1. Travco Corporation

E1-126866

3- 5-71

\$ 12,006.49

Total

\$ 12,006.49

JA 50

ICSS

AF202-195617 R

Riviera Manufacturing (Various)

Claimant and/or Service

Check #

Date Issued

Amount

1. Riviera Manufacturing Co.

EP-33231

9-23-70

\$2,501.26

Total

\$2,501.26

LCCS

PP202-195857 R

Beckett Construction Co. (Various)

	<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1.	Roy J. Beckett	E2-56974	8-19-70	\$451.86
2.	Gary Modieros	E2-57026	8-24-70	<u>125.62</u>
			Total	\$577.48

1033

#T202-196193 2

Howcor Manufacturing, Inc. (Various)

<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1. Howcor Manufacturing, Inc.	EW-94882	2-16-71	\$ 612.33
2. Crystal Valley Inc.	EW-94816	2- 9-71	500.00
3. Crystal Valley Inc. =	EW-95011	3-12-71	600.00
		<u>Total</u>	<u>\$1,712.33</u>

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LOSS

JA 53

#1292-196199 2

Burdette Upholstery Co. (Various)

Clientant and/or Person

Check #

Date Issued

Amount

1. Larry Gallagher	E2-98457	1-27-71	\$ 350.00
2. Kat Lawie	E2-98458	1-27-71	350.00
3. Dale Liscoonoo	E2-98459	1-27-71	350.00
4. Joel Burdette	E2-98460	1-27-71	350.00
5. Richard Liscoonoo	E2-100492	1-11-71	313.16
6. George Millhouse	E2-100762	2-14-71	313.73
7. James Keith Lisanben	E2-101225	3-15-71	350.00
		Total	<u>\$2,376.69</u>

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JA54

**Appendix 2: Schedule 2 Annexed to Plaintiff's
Answers and Objections to Defendant's
Interrogatories**

(Pages JA55 to JA68)

ALLOCATED

#P202-195671 R

Cobra Industries (Various)

	<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1.	Crawford & Company	E2-56583	8-19-70	\$ 44.00
2.	Crawford & Company	E2-58311	10-16-70	69.33
3.	Crawford & Company	E2-58310	10-16-70	49.45
4.	Crawford & Company	E2-58303	10-16-70	60.56
5.	Crawford & Company	E2-58309	10-16-70	78.91
6.	Crawford & Company	E2-59448	12- 2-70	197.26
7.	Crawford & Company	E2-97560	12-22-70	186.82
8.	Crawford & Company	E2-97559	12-22-70	19.85
9.	Crawford & Company	E2-97550	12-22-70	73.15
10.	Crawford & Company	E2-98263	1-20-71	69.66
11.	Crawford & Company	E2-98262	1-20-71	107.39
12.	Crawford & Company	E2-98336	1-22-71	86.60
13.	Crawford & Company	E2-98337	1-22-71	100.07
14.	Crawford & Company	E2-100252	2- 4-71	62.78
15.	Crawford & Company	E2-100253	2- 4-71	2,209.74
16.	Crawford & Company	E2-100491	2-11-71	103.63
17.	Crawford & Company	E2-100572	2-16-71	92.11
18.	Crawford & Company	E2-100561	2-16-71	84.12
19.	Crawford & Company	E2-101136	3-10-71	112.10
20.	Bosson & Tilton	E2-1742		40.00*
21.	Crawford & Company	E2-56274		973.07*
22.	Crawford & Company	E2-101360		<u>61.57</u>
			Total	\$4,963.03

ALLOCATED

#P202-195672 R

Nauta Lino, Inc. (Various)

	<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1.	General Estimate	E2-1840	3- 9-70	\$ 35.00*
2.	General Estimate	E2-1839	3- 9-70	35.00*
3.	Albert Young	E2-2232	3-21-70	145.00*
4.	Joffries Appr.	E2-2234	3-21-70	36.13*
5.	General Adjustment	E2-2233	3-21-70	16.50*
6.	Arthur A. Grant & Sons	E2-2393	4- 1-70	65.00*
7.	Foster Remodeling	E2-2500	4- 3-70	50.00*
8.	Ford H. Harcor	E2-2719	4- 9-70	119.01*
9.	Ford H. Harcor	E2-2720	4- 9-70	85.56*
10.	Doden Surveys	E2-2721	4- 9-70	112.77*
11.	Joffries Appr.	E2-2722	4- 9-70	13.00*
12.	C. Flocner	E2-2835	4-15-70	24.50*
13.	C. Flocner	E2-2836	4-15-70	14.50*
14.	Ford H. Harcor	E2-3479	5- 7-70	91.34*
15.	General Adjustment Bureau	E2-3755	5-19-70	31.00*
16.	L. Hart	E2-3756	5-19-70	60.00*
17.	Master Cleaners	E2-29604	6- 1-70	39.90*
18.	Master Cleaners	E2-55331	6-16-70	35.70
19.	General Estimate	E2-55659	6-30-70	145.00
20.	Material Damage Appr.	E2-55653	6-30-70	21.00
21.	General Estimate	E2-55660	6-30-70	15.00
22.	General Estimate	E2-55661	6-30-70	15.00
23.	Douglas Mc Mitt	E2-55618	7- 7-70	140.00
24.	Master Cleaners	E2-55319	7- 7-70	24.20

Nanta Line, Inc. (Various)

	<u>Claimant and/or Insured</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
25.	Crawford & Company	E2-56269	7-12-70	\$142.53
26.	Charles Poppier	E2-56359	7-24-70	62.24
27.	Buckeye Marine	E2-56579	8-19-70	25.00
28.	General Adjustment	E2-56900	8-19-70	39.90
29.	Suburban Boats	E2-56981	8-19-70	50.00
30.	First Adjustment	E2-56982	8-19-70	69.30
31.	Al Sain Appr.	E2-57181	8-31-70	25.00
32.	General Adjustment	E2-57184	8-31-70	32.05
33.	Arthur A. Grant & Sons	E2-57182	8-31-70	65.00
34.	Al Sain Appr.	E2-57369	9- 8-70	18.50
35.	Ford H. Mercor	E2-57371	9- 8-70	90.56
36.	Ford H. Mercor	E2-57370	9- 8-70	66.00
37.	Inc's Appraisal	E2-57602	9-21-70	91.90
38.	Al Sain Appr.	E2-57954	10- 2-70	53.20
39.	General Adjustment	E2-58193	10- 4-70	50.00
40.	Ford H. Mercor	E2-58194	10-14-70	102.12
41.	Material Damage Appr.	E2-58397	10-21-70	18.00
42.	Ford H. Mercor	E2-58481	10-25-70	62.04
43.	Major Appraisers	E2-58482	10-25-70	162.90
44.	Nickerson & Co. Inc.	E2-58667	11- 1-70	28.65
45.	Cairo Marine Service	E2-58821	11- 9-70	43.06
46.	Al Sain Appr.	E2-58822	11- 9-70	14.50
47.	Nickerson & Co.	E2-58823	11- 9-70	30.15
48.	O. W. Alton	E2-58824	11- 9-70	139.70
49.	Cairo Marine Service	E2-58825	11- 9-70	43.06
50.	Charles Thous Inc.	E3-59031	11-17-70	114.70

CONT.

TP302-195672 JA 58

Harta Line, Inc. (Various)

	<u>Claimant and/or Name</u>	<u>Contract</u>	<u>Date Issued</u>	<u>Amount</u>
51.	Rayton Adjustment Co.=	E2-59299	11-25-70	\$ 17.70
52.	W. R. Rany	E2-59446	12- 2-70	25.25
53.	Albert Young Inc.	E2-59736	12-11-70	45.00
54.	John Mac Neil	E2-59735	12-11-70	70.33
55.	Crawford & Company	E2-59877	12-16-70	29.73
56.	Miller Fairman & Sanford	E2-59879	12-16-70	372.69
57.	Crawford & Company	E2-59866	12-22-70	121.96
58.	General Estimate Service	E2-59863	12-22-70	40.000
59.	General Estimate Service	E2-59864	12-22-70	16.00
60.	General Estimate Service	E2-59706	1- 4-71	25.60
61.	Ford H. Harcor	E2-59707	1- 4-71	94.16
62.	Maurice Davies	E2-59755	1- 8-71	15.00
63.	Holmes & Company	E2-59754	1- 8-71	103.72
64.	Al Sola Appr.	E2-90303	1-22-71	22.00
65.	Corey Berg Olson	E2-90342	1-22-71	87.70
66.	Moore Marina	E2-90343	1-22-71	11.39
67.	Claude Elienor & Son	E2-90456	1-27-71	74.84
68.	John Shuttleworth	E2-100251	2- 4-71	75.00
69.	Stanley C. Bott	E2-100360	3- 8-71	40.00
70.	Ford H. Harcor	E2-100485	3-11-71	75.00
71.	J. R. Wheelton	E2-100400	3-11-71	120.00
72.	General Appr. Service	E2-100409	3-11-71	120.68
73.	Al Sola Appr.	E2-100591	3-17-71	30.25
74.	Crawford & Company	E2-100617	3-26-71	32.05
75.	Delta Manufacturing	E2-100909	3- 5-71	91.19
76.	Crawford & Company	E2-100903	3- 5-71	42.90

CONT.

#1-2-195672

JA 59

Nauru Line, Inc. (Various)

	<u>Client and/or Name</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
77.	John F. Mac Neil	E2-101311	3-17-71	\$ 37.40
78.	Arthur A. Grant & Son	E2-101323	3-17-71	<u>122.00</u>
			Total	\$5,278.74

JA 60

#P202-195005

ALLOCATED

Frame Art (Various)

Claimant and/or PayeeCheck #Date IssuedAmount

1. Crawford & Company

E2-55666

11- 4-70

\$ 142.13

2. Crawford & Company

E2-101226

3-15-71

62.98

Total

\$ 205.11

JA 61 -

ALLOCATED

/P 95C06

Frolic (Various)

Claimant and/or Person

Check #

Date Issued

Check

1. Crawford & Company

E2-56273

7-2-70

\$ 85.44

Total

\$ 85.44

JA 62

ALLOCATED

#P202-195007

Allstar Coach, Inc. (Various)

Claimant and/or PayeeCheck #Date IssuedAmount

1-

Action Fund

E2-56137

7-16-70

\$ 17.89

Total

\$ 17.89

JA 63

#P202-195809

ALLOCATED

Banner Homes (Various)

	<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1.	Crawford & Company	E2-55291	6-16-70	\$ 43.98*
2.	Crawford & Company	E2-56270	7-21-70	251.18
3.	Crawford & Company	E2-97599	12-23-70	137.70
4.	Crawford & Company	E2-100588	2-17-71	447.02
			Total	<hr/> \$879.88

JA 64

ALLOCATED

#P202-195811

Condor Coach (Various)

Claimant and/or Payee

Check #

Date Issued

Amount

1. W. Howlett

E2-59433

12- 2-70

\$ 32.00

Total

\$ 32.00

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ALLOCATED

#P202-195813 R

Lofgren Manufacturing Co. (Various)

	<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1.	General Adjustment	E2-57186	8-31-70	\$ 41.00
2.	General Adjustment	E2-58193	10-14-70	19.55
3.	General Adjustment	E2-58100	10-21-70	35.50
4.	General Adjustment	E2-58864	11- 4-70	55.85
5.	General Adjustment	E2-58869	11-10-70	46.50
6.	General Adjustment	E2-59303	11-25-70	18.00
7.	General Adjustment	E2-59375	12-16-70	11.25
8.	General Adjustment	E2-97755	1- 4-71	43.60
9.	General Adjustment	E2-98340	1-22-71	109.75
10.	General Adjustment	E2-100255	2- 4-71	104.32
11.	General Adjustment Bureau Service	E2-100565	2-16-71	54.70
12.	General Adjustment Bureau Service	E2-100703	2-22-71	48.00
13.	General Adjustment Bureau Service	E2-100702	2-22-71	54.80
14.	General Adjustment Bureau Service	E2-101281	3-16-71	88.60
15.	General Adjustment Bureau Service	E2-101230	3-16-71	100.15
			Total	5932.57

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JA 66

ALLOCATED

/P202-195814 R

Uto Liner (Various)

	<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1.	General Adjustment	E2-57190	9- 1-70	\$ 56.40
2.	General Adjustment	E2-57189	9- 1-70	17.90
3.	General Adjustment	E2-57183	9- 1-70	33.30
4.	General Adjustment	E2-58904	10-16-70	52.00
5.	General Adjustment	E2-59023	11-17-70	54.80
6.	General Adjustment	E2-59030	11-17-70	30.40
7.	General Adjustment	E2-59273	12-16-70	80.90
8.	General Adjustment Bureau Inc.	E2-100703	2-22-71	56.00
9.	General Adjustment Bureau Inc.	E2-100707	2-22-71	56.80
			<u>Total</u>	<u>\$439.30</u>

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JA 67

ALLOCATED

#P202-195315 R

Rancho Trailers Inc. (Various)

	<u>Claimant and/or Payee</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>
1.	General Adjustment	E2-56135	7-16-70	\$ 8.00
2.	Tires Adjustment	E2-56972	8-19-70	33.63
3.	General Adjustment	E2-57185	8-31-70	30.85
4.	General Adjustment	E2-57953	10- 2-70	31.45
5.	General Adjustment	E2-58372	10-16-70	43.13
6.	General Adjustment	E2-59024	11-17-70	54.30
7.	General Adjustment	E3-59304	11-25-70	52.60
8.	Independent Auto	E2-59376	12-16-70	61.84
				<hr/>
		Total		\$315.85

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JA 68 -
#P202-196199 R

ALLOCATED

Burdette Upholstery Co.

Claimant and/or Person

Check #

Date Issued

Amount

1. Independent Auto Appr.

E2-96461

1-27-71

\$ 29.00

Total

\$ 29.00

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JA69

**Appendix 3 Annexed to Plaintiff's Answers and
Objections to Defendant's Interrogatories**

(Pages JA70 to JA83)

JA 70

March 5, 1970

Mr. W.J. Wilczynski, Jr.
Marsh & McLennan, Inc.
231 South LaSalle Street
Chicago, Illinois 60604

Re: Product Liability
Continental Vinyl

Dear Bill:

Confirming our telephone conversation, attached is Liberty Mutual's letter received by hand today stating that it appears the claims resulting from the above occurrence will exceed the limit of their basic policy.

As we discussed, the Liberty has been doing a lot of basic footwork on these claims and, therefore, we would prefer if possible, that Continental allow them to continue these settlements. As we discussed, we have a definite customer relationship we must protect and to change horses at this point will only aggravate the situation from a customer standpoint.

We still feel that Continental Vinyl is basically at fault and their Products Liability carrier should step forth in this matter but as we discussed, so far they have not.

We attach pertinent parts of our file

Mr. Fred Mason
Liberty Mutual Insurance Company
10 Rockefeller Plaza
New York, New York 10020

Telephone No. 212-PL7-1000

can fill the Continental in on all aspects of this claim.

Please keep us advised if we can be of assistance.

Very truly yours,

U.S. PLYWOOD - CHAMPION PAPERS INC.

WFW:1b

cc: S. Brown - N. Y.
J. Clarson - N.Y.
W. Mason - Liberty Mutual

W.F. Wynne
Director of Risk Management

JA 71

LIBERTY
MUTUAL



10 Rockefeller Plaza, New York, New York 10020 • PLaza 7-1000

March 5, 1970 RECEIVED

U.S. Plywood-Champion Papers Inc.
777 Third Avenue
New York, New York 10017

MAR 8 1970

INSURANCE

Attn: W. F. Wynne, Director of Risk Management

RE: CONTINENTAL VINYL CLAIMS

Dear Bill:

As you know, we have conducted an extensive investigation on the reported claims on the Continental Vinyl matter. It is our opinion that the value of the claim settlements will exceed our policy limit of \$100,000, for one occurrence.

It is urgent that your excess carrier be notified at the earliest possible date.

Very truly yours,

F.G. MASON
DIVISION SERVICE MANAGER

FGM/lk

CHICAGO
DETROIT
INDIANAPOLIS
ST. LOUIS
NEW ORLEANS
INDIANAPOLIS
TULSA
ST. PAUL
KALAMAZOO
DULUTH
MILWAUKEE
LOS ANGELES
SAN FRANCISCO
SEATTLE
PORTLAND
PHOENIX
SAN DIEGO
OAKLAND
SPOKANE
JUNEAU
MELBOURNE
SYDNEY

ESTABLISHED 1871
MARSH & MCLENNAN

INCORPORATED
INSURANCE

231 SOUTH LA SALLE STREET CHICAGO 60604

AREA CODE 312 346-1400

March 9, 1970

RECEIVED

INSURANCE

NEW YORK
BOSTON
PHILADELPHIA
ATLANTA
ROCHESTER
MIAMI
BUFFALO
SYRACUSE
RICHMOND
CHARLESTON
TORONTO
MONTREAL
QUEBEC
VANCOUVER
CALGARY
WINNIPEG
EDMONTON
WINDSOR
CARACAS
SAO PAULO
BRUSSELS
ROME

Mr. W. F. Wynne
Director of Risk Management
U. S. Plywood-Champion Papers, Inc.
777 Third Avenue
New York, New York 10017

Dear Bill:

PRODUCT LIABILITY
CONTINENTAL VINYL
NOVEMBER 1969

The data which you sent to us with your letter of March 5 has been passed on to the Continental Casualty Companies' Claim Manager in New York along with the request that he immediately contact Mr. Fred Mason in order that both companies can "dovetail" their handling of this matter.

We have advised the Continental Casualty Company that the faulty product was manufactured by Continental Vinyl Products 5015 District Boulevard, Vernon, California. It was sold as is by U. S. Plywood-Champion Papers to various trailer and boat manufacturers throughout the United States. Continental Vinyl is insured for products liability with a limit of \$500,000 through Glen Falls and it is our understanding that their policy contained broad form vendors coverage. Their carrier, however, is reserving their rights.

Inasmuch as the Liberty has been involved in a number of these settlements and that their \$100,000 property damage liability limit will shortly be exhausted we have recommended to the Continental Casualty Company that they work out an agreement with Liberty whereby Liberty would continue to handle the claims as per your request.

Yours very truly,

Vice President

W. J. Wilczynski, Jr.

jk

cc: Messrs. E. L. Russel
Don Murbach
C. W. Dugan

U.S. PLYWOOD-CHAMPION PAPERS INC.
777 THIRD AVE., NEW YORK, N.Y. 10017

JA 73

April 17, 1970

Mr. F.G. Mason
Liberty Mutual Insurance Co.
10 Rockefeller Plaza
New York, New York 10020

Re: Continental Vinyl Occurrence

Dear Fred:

Confirming our phone discussion, we have received wire from our broker, Marsh & McLennan, that coverage under the Continental Casualty Company policy will not be prejudiced by our contracting with you to continue settling the claims that are outstanding for the above occurrence.

This is to confirm that we have reviewed with our legal and sales personnel the procedure you have outlined as follows:

The Liberty will investigate and settle each claim. You will forward to us the release obtained and the supporting documents. We will issue check to the claimant in the amount of the agreed settlement and forward to either the claimant or your office, as you instruct. Your charge for this service will be between 15 and 20% of the actual claim settlement.

After we have paid the claims and your charges, we will forward the supporting information and charges to our Broker Marsh & McLennan, Inc., Chicago for collection of these amounts from our Excess Liability Carrier, Continental Casualty Company.

Very truly yours,

U.S. PLYWOOD-CHAMPION PAPERS INC.

WFW:lb

cc: S. Brown - New York
J. Clarson - New York
C. Dugan - M&M, Chicago
R. Sekunda - Continental
J. Jinishian - New York

← THIS COPY FOR

Bill
W.F. Wynne
Director of Risk Management

JA 74

US PLYWD NY

RECEIVED

MARSHMAC CGO

APR 17 1970

CHAMPION PAPERS INC. A-17-70 12:41 PM FROM C. W. DUGAN

INSURANCE

ATTN MR. WILLIAM F. WYNNE

CONTINENTAL CASUALTY COMPANY HAS REEDED THAT COVERAGE UNDER THEIR
POLICY IS NOT PREJUDICED BY YOUR CONTRACTING WITH THE LIBERTY TO
CONTINUE THE SETTLEMENT OF CLAIMS INVOLVING THE CONTINENTAL
VINYL MATTER. WE RECOMMEND THAT U.S. PLYWOOD-CHAMPION PAPERS
APPLY ALL PRESSURE NECESSARY TO GET THE LIBERTY TO AGREE TO
BINDING ARBITRATION BY THE DEFENSE RESEARCH INSTITUTE.
A FORMAL LETTER WILL BE FORTHCOMING FROM THE CONTINENTAL
CASUALTY COMPANY WHICH WILL OUTLINE THEIR POSITION IN DETAIL.

END

D5828

JA 75

date April 20, 1970

ONLY COPY AVAILABLE

to J. DePledge - New York
from W. Wynne - New York

Subject Continental Vinyl Occurrence

Dear Jack: -

Attached find draft of memorandum to be sent to all Branch Operations on the captioned subject (Exhibit A).

In order to retain a complete listing of all claims handled for us by the Liberty Mutual we have requested all such claims information be sent to your attention, we would suggest that an alphabetical listing be kept of each claim and a copy of the information be sent directly to:

Mr. F.G. Mason
Liberty Mutual Insurance Co.
10 Rockefeller Plaza
New York, N.Y. 10020

Fred will in turn shoot it out to the proper local Liberty Claims Office. They will adjust the claim, take a release and forward the release and supporting papers to Fred Mason. There will be a record on the papers of the amount of the insured portion of the claim and the product cost separated. The release would cover both items. Fred will forward the original release and back up papers to you.

It is important to set up a workable arrangement with your Accounting Department for you will be requesting a check made out to the claimant to cover the release. The check will be mailed directly to the claimant with a suggested note (see Exhibit B).

We would suggest you keep in your register a copy of the check sent. It would also be well to keep a running record of the settlements to be submitted to our Excess Carrier through our broker, Marsh & McLennan. They would want a copy of the back up and release. We could list these once every other week to be forwarded to Marsh & McLennan.

If there is any question on the above, please advise.

Very truly yours,

Bill
W.F. Wynne

WFW:lb

cc: S. Brown - New York
J. Clarson - " "

C. Dugan - M&M, Chgo.

F. Mason - Liberty, N.Y.

R. McGrath - New York
J. Jinishian - " "

THIS COPY FOR

U.S. PLYWOOD-CHAMPION PAPERS INC.

EXHIBIT A

DRAFT

date April 20th, 1970

to All Branches
from J. DePledge - New York

ONLY COPY AVAILABLE

Subject Continental Vinyl Occurrence

Gentlemen:

This is to advise that the Company has retained Liberty Mutual Insurance Company as our agent to continue settlement of all claims involving Continental Vinyl Product.

Therefore, again we caution you not to settle or promise settlement of any claim involving this product, as claims not settled by the Liberty Mutual will be at your own expense.

If you have correspondence or phone calls on this subject, these should be referred immediately to this office. All further inquiries or correspondence should follow the same route. It would be best to request a written statement from anyone who calls on this subject.

All claims you forward will be turned over to the Liberty Mutual New York Office who in turn will direct these claims to the proper local Liberty Mutual Office. Attached is a listing of the Liberty Mutual Local Offices.

There will be a complete list of all such claims in this office as well as the New York Liberty Mutual Office. However, if you wish to follow-up on any claim submitted, please call the local Liberty Office who will report back to you.

The settlement check will be issued by U. S. Plywood based on the adjustment obtained by the local Liberty Mutual Office.

Yours very truly,

J. DePledge

J. DeP:

c.c. S. Brown-New York
R. McGrath-New York
W. F. Wynne- New York

Fred Mason- New York
J. Jinishian- New York

date April 24, 1970

to Roger McGrath - New York
from William F. Wynne - New York

subject Continental Vinyl Occurrence

Dear Roger:

You have requested an overall summary of the subject claim; we have reviewed this with Liberty Mutual, our primary products liability insurance carrier, and summarize as follows:

1. Continental Vinyl sold to U.S.P.-C.P.I. vinyl coated plywood panels which our branches resold to a number of clients in various manufacturing industries (trailer, coach, boat, door etc.). In the resale we did not change the form of the product. The products have delaminated. Our claim would run to Continental Vinyl who were insured for \$500,000 by the Glen Falls Insurance Company. Continental Vinyl has gone into bankruptcy and their insurance carrier after paying about eight of these claims has filed a disclaimer of liability.
2. Liberty Mutual, our primary carrier, has treated the entire claim as one occurrence and paid their policy limits \$100,000. (Actually their payment to date is \$112,000 of which \$5,000 is the deductible and \$7,000 is the cost of the product itself which is not covered under the Products Liability Insurance.
3. Our excess carrier, The Continental Casualty Company, should step in and handle the claim above that amount. However, they disagree with the Liberty's interpretation of their policy, see attached 4-20-69 letter.
4. Therefore, with the agreement of Continental Casualty, we have retained the Liberty Mutual as agents to adjust the remainder of the claim for us. We will pay a fee of 15 to 20% of the claims amount and the claim plus the fee minus the cost of the product itself will be passed on to our brokers, Marsh & McLennan, to be paid by our excess carrier.

U.S. PLYWOOD - CONTINENTAL REPAIRS LTD.

JA 78 8

Roger McGrath

Page 2

April 24, 1970

5. You have requested that we estimate the outstanding remaining liability on this claim:

There are 12 known manufacturers with complaints, the principal ones being Cobra and Nautaline. On Cobra, Liberty has paid for 40 trailers \$78,000 and estimate payment of approximately \$80,000 more. (In addition, our company has loaned \$50,000 to Cobra which we should receive back). On Nautaline, 16 boat claims have been processed for \$24,000. The estimated additional liability is \$220,000 on Nautaline.

It is estimated that the remainder of the claim for all other manufacturers outstanding is \$75,000.

6. In summary:

- a. Liberty has paid \$112,000 of which U.S. Plywood will be requested to pay \$12,000.
- b. Outstanding is \$375,000 of which we estimate \$38,000 will be product itself paid by us.
- c. We will be advancing payment for the remaining \$337,000 and will be looking for repayment from Continental Casualty, our excess carrier. We will also have a course of action against Continental Vinyl and their carrier, Glen Falls.

The Liberty Mutual is checking into the request to pay the claims on their own check out of a fund we would set up. They should have an answer by the middle of next week. In the interim, they are proceeding with the claims settlements.

Very truly yours,

Bill
W.F. Wynne

WFW:lb

cc: S. Brown - New York ✓
J. Clarson - New York
J. DePledge - New York
C. Dugan - M&M, Chicago
F. Mason - Liberty Mutual
J. Jinishian - New York

May 12, 1970

Mr. W. F. Wynne
U. S. Plywood-Champion Papers Inc.
777 Third Avenue
New York, New York

Dear Bill:

Attached is a brief exhibit indicating the outstanding value of the Continental Vinyl occurrence.

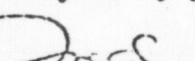
As Mr. Farquharson advised, we need a fund of \$225,000. to assist Plywood in this adjustment of excess loss. The fund would be set up by our Home Office Financial Department.

We expect to have all of the loss amounts adjusted in the next 120 days, with some 60% of the total loss settled in 60 to 90 days.

We intend to furnish monthly an itemized statement of losses paid, and allocated and unallocated expenses. Each individual settlement will be identified by Claimant and/or Payee, Check Number, Date Issued, Loss Amount and Allocated Amount. The special nature of this statement would not make it available before the sixth week.

When the advance is depleted to a point that appears insufficient to finance the current rate of disbursement, we will review with you the estimates for future settlements, and obtain additional advances as needed.

Very truly yours,


F. G. Mason

Division Service Manager

FGM/dg
Att.

Summary of Outstanding Loans:

220,000

Nauta-Line

Some 100 claims with average value of \$2,000.

80,000

Cobra

About 43 trailer claims, plus Cobra's claim for damages.

75,000

Frome Art, Frolic Homes, All-Star Coach, Keystone Coach, Banner Homes, Bobby's Custom Campers, Condor Coach, Universal Campers, Lafgren Mfg., Ute Liner, Rancho Trailers, Travco Corp.

Variety of small claims - almost entirely - dealing directly with manufacturers.

375,000

5,000

Allocated Expenses

Damage surveys and appraisals by independent contractors.

57,000

Unallocated Expenses

Cost of adjusting and settling claims - 15%, computed as a percentage of loss.

\$437,000

U.S. PLYWOOD-CHAMPION PAPERS INC.
777 THIRD AVE., NEW YORK, N.Y. 10017

JA 81

May 12, 1970

Mr. Fred Mason
Liberty Mutual Insurance Co.
10 Rockefeller Plaza
New York, N.Y.,

Re: Continental Vinyl Occurrence

Dear Fred:

As requested in your May 12, 1970 letter, attached is U.S. Plywood Check #6-14109 in the amount of \$225,000 to set up the fund from which you will pay the losses on the above claim above those paid on your basic policy.

As we discussed, if an individual loss exceeds \$5,000 you will contact us prior to agreement to settle such loss.

We appreciate the assistance you are giving us in this matter.

Very truly yours,

U.S. PLYWOOD-CHAMPION PAPERS INC.

WFW:lb

W.F. Wynne
Director of Risk Management

cc: J. Clarson - N.Y.
S. Brown - N.Y. ✓
R. McGrath - N.Y.
J. Jinishian - N.Y.
J. DePledge - N.Y.
C. Dugan - M&M, Chicago
R. Sekunda - Continental Casualty, N.Y.

CV
JA 82

August 27, 1970

Mr. Fred Mason
Liberty Mutual Insurance Co.
10 Rockefeller Plaza
New York, New York

Re: Continental Vinyl Occurrence

Dear Fred:

Attached please find U. S. Plywood check number 6-14510 in the amount of \$100,000 as requested in your August 26, 1970 letter on the captioned subject.

We appreciated your summary as of August 22, 1970 which indicated a payment of \$334,243.51 excess of your original payments of \$113,376.00. Since the fund advanced to date for the Excess Loss Claims Service was \$325,000 this left you in deficit of \$9,243.51.

We appreciate your assistance in this matter.

Very truly yours,

U. S. PLYWOOD-CHAMPION PAPERS INC.

Bill
W. F. Wynne
Director of Risk Management

WFW:ml

cc: J. Clarson - N.Y. ← THIS COPY FOR
S. Brown - N.Y.
R. McGrath - N.Y.
J. Jinishian - N.Y.
J. De Pledge - N.Y.
C. Dugan - M&M, Chicago
R. Sekunda - Continental Casualty, N.Y.

December 2, 1970

JA

83

10 Rockefeller Plaza, New York, New York 10020 • PLaza 7-1000

Mr. Fred Mason
Liberty Mutual Insurance Co.
10 Rockefeller Plaza
New York, New York 10020
U. S. Plywood-Champion Papers, Inc.
777RE: Continental Vinyl Occurrence
New York, New York 10017

Dear Fred:

Att: W. F. Wynne, Director of Risk Management
Attached please find U.S. Plywood check No. 6-14877,
dated December 1, 1970, in the amount of \$100,000,
as requested in your November 30, 1970 letter.

Thank you for the summary as of November 22, 1970,
which indicates a total payout in excess of your
basic policy of \$433,427.75.

I am attaching the most recent accounting for the period ending
November 22, 1970.

Very truly yours,

You will note that we have a deficiency. U.S. PLYWOOD-CHAMPION PAPERS INC.

At this time in view of the payments rendered, we will need a further
deposit of \$100,000. We would appreciate it at the earliest
possible date.

W. F. Wynne
Director of Risk Management

WFW:lcf
Very Attachment,

cc: J. Clarson - New York
F. G. MacR. Beckett - Knightsbridge
Division SS: Brown - New York ← THIS COPY FOR
R. McGrath - New York
FGM:ta J. Jinishian - New York
Att: J. DePledge - New York
E. Parks - M&M, New York
R. Sekunda - Continental Casualty, New York

JA84

**Appendix 4 Annexed to Plaintiff's Answers and
Objections to Defendant's Interrogatories**

(Pages JA85 to JA87)

ONLY COPY AVAILABLE

JA 85

LIBERTY
MUTUAL



10 Rockefeller Plaza, New York, New York 10020 • PLaza 7-1000

May 6, 1970

U. S. Plywood-Champion Paper Inc.
777 Third Avenue
New York, New York 10017

44-7-120

INSURANCE

Att: W. F. Wynne, Director of Risk Management

Re: Continental Vinyl Occurrence

Dear Bill:

Attached to your letter of April 17, 1970 was included a copy of the telegram addressed to your attention from Marsh and McLennan with respect to the above matter.

This letter will serve to advise you that we, Liberty Mutual Insurance Company are not going to submit to binding arbitration by Defence Research Institute or anyone else. The excess insurance problem does not exist between Liberty Mutual and C N A. U. S. Plywood-Champion Papers has the contractual relationship with C N A.

Liberty Mutual and U. S. Plywood are in agreement on a position that all these claims constitute one occurrence.

If you have any questions concerning this, I would appreciate your advice.

Very truly yours,

F. G. Mason
Division Service Manager

FGM:TA

May 1, 1970

CNA Insurance
76 William Street
New York, New York 10005

Att: Richard J. Sekunda,
Assistant Manager

Re: Continental Vinyl Matter

Dear Mr. Sekunda:

Our position, that Liberty Mutual does not have two separate policies affording coverage for the claims being made, is simply based upon the following policy provisions, copy of which we previously supplied you:

Endorsement No. 1 - Paragraph 4

Limits of Liability; Non-cumulation of Liability - Same Occurrence:

The last paragraph of Section IV, "Limits of Liability" is replaced by the following:

"Coverage A and B - For the Purpose of Determining the Limit of the Company's Liability:

- (1) All Personal injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions and,
- (2) All personal injury arising out of a series of publications or utterances of the same or similar defamatory material shall be considered as arising out of one occurrence."

The following paragraph is added to Section IV:

"If the same occurrence gives rise to personal injury or property damage which occurs partly before and partly within the policy period, the each occurrence limit and the applicable aggregate limit or limits of this policy shall be reduced by the amount of each payment made by the company with respect to such occurrence under a previous policy or policies of which this policy is a replacement."

We believe this should be self-explanatory.

Very truly yours,

F. G. Mason
Division Service Mgr.

FGM/dg

cc: Mr. W. F. Wynne,
Director of Risk Management
U.S. Plywood-Champion Papers, Inc.

JA88

Stipulation

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

70 Civ. 5277

[SAME TITLE]

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED by and between the undersigned attorneys for the respective parties indicated below that (1) defendant's motion for an order requiring plaintiff to compile information, (2) defendant's motion for an order requiring plaintiff to produce documents, and (3) plaintiff's motion for an order requiring defendant to produce documents, each of which is presently scheduled to be heard on June 15, 1972, are hereby withdrawn, without prejudice to a renewal of each or any part of said motions, in order to permit counsel for both parties to continue to confer in an effort in good faith to resolve by agreement the issues raised by these motions, thereby eliminating the need to invoke the intervention of the Court.

IT IS FURTHER STIPULATED, CONSENTED TO AND AGREED that the withdrawal of defendant's motions and plaintiff's motion shall not be deemed to constitute a waiver of the requests or issues raised therein, nor to prejudice either party in respect thereof, and that, to the extent, if any, that the requests or issues raised by said motions are not resolved by agreement, either party may reapply for such



JA89

Stipulation

relief as may be appropriate to resolve such requests of issues.

Dated: New York, New York
June 14, 1972

KRONISH, LIEB, SHAINSWIT, WEINER
& HELLMAN

By /s/ ABNER P. SLATT

A Member of the Firm
Attorneys for Plaintiff

HART & HUME

By /s/ JACK HART

A Member of the Firm
Attorneys for Defendant

June 15, 1972

So ORDERED:

/s/ IRVING BEN COOPER
U. S. D. J.

Stipulation

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

IT IS HEREBY STIPULATED, CONSENTED AND AGREED, by and between the undersigned attorneys for the respective parties indicated below, that the complaint herein shall be deemed amended in connection with the amount of plaintiff's claim so as to allege that plaintiff has been required to pay, for property damage and for the expenses, investigation and settlement of property damage caused by the delamination of the defective Continental Vinyl-covered panels, the sum of \$1,612,508.39.

Dated: New York, New York
October 11, 1974

Kronish, Lieb, Shainswit,
Weiner & Hellman

By: /s/ Seymour Shainswit

A Member of the Firm
Attorneys for Plaintiff

Hart & Hume

By: /s/ Jack Hart

A Member of the Firm
Attorneys for Defendant

SO ORDERED:

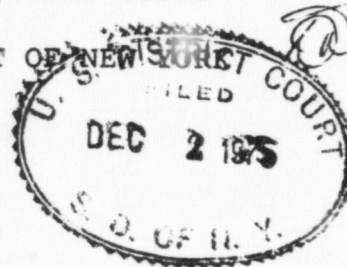
/s/ GUS J. SOLOMON
U.S.D.J.

JA91

TRANSCRIPT OF PROCEEDINGS
(September 20, 1974, and October 16, 1974)

(Pages JA92 to JA158)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



CHAMPION INTERNATIONAL CORPORATION,)

) Plaintiff,)

vs.)

) 70 Civil 5277
)

CONTINENTAL CASUALTY COMPANY,)

) Defendant.)

New York City
Pre-trial Conference
September 20, 1974
Trial
October 16, 1974

TRANSCRIPT OF PROCEEDINGS

BEFORE:

The Honorable Gus J. Solomon, Senior Judge,
sitting by special assignment in the Southern
District of New York.

APPEARANCES:

Pre-trial Conference, September 20, 1974,

Mr. Abner Slatt, representing the plaintiff;

Mr. Cecil Holland, Jr., representing the defendant.

Trial, October 16, 1974,

Messrs. Seymour Shainswit and Abner Slatt,
representing the plaintiff;

Messrs. Jack Hart and Cecil Holland, Jr.,
representing the defendant.

FEDERAL COURT REPORTERS

UNITED STATES COURTHOUSE
PORTLAND, OREGON 97205

221-3113

74

1 Pre-Trial Conference

2 September 20, 1974

3 THE CLERK: Champion International
4 Corporation vs. Continental.

5 MR. SLATT: I was just explaining to Mr.
6 Holland, the Judge said he doesn't operate with
7 findings of fact.

8 THE COURT: That's right, unless you can
9 agree on the findings. I do it a little differently.

10 Tell me what this case is about.

11 MR. SLATT: Well, Your Honor, Champion
12 International Corporation had been in the business of
13 buying vinyl covering panels for a company called
14 Continental Vinyl Products Corporation in California
15 and selling those vinyl panels to customers who were
16 manufacturers of house boats and trailers.

17 In 1969, after a large number of
18 those panels had been used by the manufacturers to
19 complete the house boats and trailers, there was a
20 few of those panels which became delaminated, that is,
21 the vinyl cover began to peel off. The problem got
22 worse and worse, and Champion asked its insurance
23 carrier, Liberty Mutual, to step in and begin to handle
24 the settlement of these claims and asked its excess
25 carrier, Continental Casualty to recognize coverage

1 of the excess carrier under its insurance policy for
2 those claims.

3 This case represents a dispute
4 between Champion and its excess carrier, Continental,
5 for coverage above the legal extended coverage for
6 Liberty Mutual under its underlying policy for the
7 loss by the process of elimination.

8 THE COURT: What is the defense in the
9 case; no coverage?

10 MR. HOLLAND: We concede that the type of
11 damage sustained is the type of damage covered by the
12 policy. It is a product liability claim and the
13 policy provides for liability coverage.

14 The question concerns really the
15 limits of liability of the excess policy and the
16 underlying policy by Liberty Mutual.

17 Liberty Mutual has a \$100,000 per
18 occurrence and \$200,000 aggregate in any one policy
19 year and over a \$5,000 deductible.

20 The deductibles are very crucial in
21 this case. We come in after Liberty's limits have
22 been exceeded.

23 We are still putting together some
24 of the facts on this as far as reviewing the damage
25 claims.

1 THE COURT: There was no liability in
2 excess of \$5,000?

3 MR. HOLLAND: We are checking whether the
4 damage to any one vehicle was in excess of \$5,000. So,
5 the question in this litigation comes down to, what is
6 an occurrence for purposes of the policy involved. If
7 an occurrence is the damage to each vehicle, an occur-
8 rence involves less than \$5,000 worth of damage.

9 THE COURT: Who wrote the policy?

10 MR. SLATT: Marsh & McLennan were the
11 brokers.

12 THE COURT: What kind of policy is this?

13 MR. HOLLAND: I think it's the standard
14 excess policy that Continental was using at the time.

15 THE COURT: Then it is to be construed
16 against Continental Casualty in case of ambiguity.

17 MR. HOLLAND: We are aware of the problem.

18 THE COURT: This is a jury case?

19 MR. SLATT: We previously discussed with
20 Judge Pollack the feasibility of doing away with the
21 need for a jury, although a jury was demanded
22 originally.

23 THE COURT: I don't see why you would need
24 a jury. Doesn't it involve the wording of the policy?

25 MR. HOLLAND: The construction of the

1 policy.

2 MR. SLATT: That's the essential issue.

3 THE COURT: Who are your witnesses and
4 what are they going to testify to?

5 MR. SLATT: Well, Your Honor, we are in a
6 situation where we are getting our paper facts
7 together. We don't think there is going to be much
8 of a dispute as to the factual predicate because Mr.
9 Holland and I are sitting down in our offices fairly
10 regularly going over reports made by Liberty Mutual
11 in the course of settling the claims. It's really a
12 paper case so far and not a witness case. But we
13 really don't know that until we finish the completion
14 of that paper work.

15 THE COURT: When can you complete it?

16 MR. SLATT: We were hoping to complete it
17 sometime in October.

18 THE COURT: You will have to complete it
19 sometime in September. If you were getting together
20 once a week beforehand, you'd better get together in
21 the mornings and in the afternoons because this case
22 has got to be tried or it is going to be dismissed.

23 It seems to me that if it is just a
24 matter of paper work, you could take a look at these
25 things.

1 MR. HOLLAND: Your Honor, the paper work
2 is voluminous. This involves approximately 1,500
3 damage claims. We have been reviewing those claims
4 and we are virtually finished with that aspect of the
5 task in order to be able to agree with Mr. Slatt as
6 to the facts of these claims and the payment of the
7 loss.

8 THE COURT: Why would that be necessary
9 without first determining what the words mean, for
10 example?

11 MR. HOLLAND: We feel it's only in the
12 context of the facts that we can supply the words.

13 We feel very strongly that the
14 influence of the damage on a particular vehicle is the
15 occurrence. There is also some authority that the
16 Court should look to the sale of the wooden order,
17 that is the occurrence and all damages related to the
18 one sale would be one occurrence. So, to be able to
19 present all issues to the Court, we have been review-
20 ing, in addition to the claims of Liberty Mutual, who
21 adjusted the loss, we have been looking at the record
22 of the sales.

23 THE COURT: You think it is necessary to
24 examine each and every invoice in order to be able to
25 understand the legal issues involved in this case?

1 MR. HOLLAND: I'm inclined to believe that.

2 THE COURT: I don't think so. Next
3 Wednesday bring in your stipulated set of facts and
4 the names of all your witnesses. You are not going
5 to wait until the end of October.

6 MR. HOLLAND: The problem on many of
7 these things has been getting them. We have been
8 waiting to get this.

9 THE COURT: This case has been going on
10 since 1970. Under the rules of the Judicial Conference
11 of the United States, any case that is over three
12 years old is on the critical list. This case has
13 been on the critical list for over a year. If you
14 want me to order you to devote full time day in and
15 day out to getting this information, I will do it, but
16 you are not going to wait beyond next Wednesday to
17 come in with all the documents you think are necessary.

18 MR. HOLLAND: Some of them have not been
19 made available to us by the plaintiff, Your Honor.

20 MR. SLATT: Your Honor, we have been
21 trying to get them from the manufacturers, as many as
22 we can. We will try, with Mr. Holland to see what we
23 can agree on and not agree on. Perhaps we can do
24 some work together to come up with something that
25 would at least give us a chance for a ruling on

1 liability.

2 THE COURT: I am going to bifurcate the
3 case and decide the issue of liability. On the
4 meaning of the policy, when can you get your brief
5 on that issue?

6 MR. SLATT: I think it would take us about
7 ten days, Your Honor.

8 THE COURT: I will give you both ten days.
9 File simultaneous briefs and five days thereafter to
10 reply.

11 MR. HOLLAND: I am sorry, Your Honor,
12 would you want a brief in opposition?

13 THE COURT: You both file simultaneous
14 briefs. Then each one will be given opportunity to
15 answer, within five days, the brief of the other.

16 MR. SLATT: Thank you, Your Honor.

17 THE COURT: I will give you some dates.
18 The parties will exchange briefs on Thursday, October
19 3rd; the answering briefs will be filed not later than
20 Wednesday, October 9th.

21 Then if the parties believe they
22 want to submit any information, the kind Mr. Holland
23 described, they may do it Wednesday, October 16th.
24 We will start at 8:00 o'clock in the morning. That
25 will give you an opportunity to handle your other

1 work after that time. We will take the evidence and
2 listen to your arguments.

3 So there will not be any misunder-
4 standing I will recite it again. This involves the
5 interpretation of an underlying insurance policy
6 written by the Liberty Mutual, an excess policy by
7 Continental Casualty Company.

8 The issue involved is whether certain
9 products purchased by plaintiff and sold to various
10 manufacturers of houseboats and trailers in which the
11 lamination because defective is covered under an
12 occurrence and whether the occurrence is the loss and
13 damage to each particular houseboat or trailer or
14 whether it involves one sale which covers many house-
15 boats and trailers. It is my opinion that would be a
16 question of the interpretation of the policy. If the
17 parties want to put in additional information they
18 may do so.

19 This case was filed in 1970. Judge
20 Pollack instructed me to try this case. He said the
21 parties had agreed to be ready to try the case.
22 Apparently he has suggested the parties come in either
23 with stipulated facts or proposed findings of fact.

24 I have told these men I have
25 bifurcated the issue of liability. I am willing to

1 listen to the other information of showing what
2 Liberty Mutual has been doing in connection with their
3 settlements of these cases. I think four to five
4 years is long enough to have obtained this information.

5 I make this record so if anybody is
6 dissatisfied, the Court of Appeals will know exactly
7 why I am taking this action. I am here at the request
8 of the Court of Appeals and this District to dispose
9 of some of these cases which are on the critical list.

10 MR. HOLLAND: Your Honor, if I may, I only
11 want to note that the reason the examination of the
12 underlying documents including the records of the
13 settlement of the claims and including the records
14 with respect to the sales involved has not been
15 completed before, in part is because they have only
16 been made available to us very recently.

17 THE COURT: When did you serve your demand
18 for these things?

19 MR. HOLLAND: Your Honor, several years
20 ago we had pending before this Court a number of
21 motions by both sides with respect to discovery; in
22 view of the amount of documentation involved and in
23 view of the fact that documentation was spread around
24 the country, we entered into a stipulation with the
25 plaintiff that we would withdraw the motion and

1 proceed to gather this information.

2 THE COURT: How many years ago was that?

3 MR. HOLLAND: Approximately two years.

4 It's been a long process. Both plaintiff and defendant
5 have been working at it.

6 THE COURT: Do you want to bring your
7 time records to show how many months continuously you
8 have worked on this particular issue?

9 MR. HOLLAND: I don't pretend, Your Honor,
10 we have been working on it day and night but we have
11 been progressing.

12 THE COURT: You heard my ruling.

13 MR. HOLLAND: I certainly have.

14 THE COURT: The party that is not ready,
15 I will strike his pleadings.

16 MR. HOLLAND: Could I ask, if I may for
17 clarification, these briefs deal with the issue of
18 liability on the 16th?

19 THE COURT: Yes. I told you I thought the
20 first brief should deal with the issue of liability.
21 In my view it involves the interpretation of the
22 contract of insurance. If you want to use certain
23 examples of what Liberty Mutual was doing, you can,
24 but I don't think you have to make that type of
25 examination of all the policies and all the actions

1 and all the claims filed throughout the United States
2 and Europe in order to do that. I think you have got
3 enough now in order to be able to adequately present
4 this to the Court. I told you I would listen to you.
5 I also asked you to file simultaneous briefs.

6 MR. HOLLAND: I understand that, Your
7 Honor. I just wanted to be sure what is required of
8 us on the 16th. We are to argue the question of
9 liability as on the motion for summary judgment. Are
10 we to be able to introduce evidence on the issue of
11 liability only at that time?

12 THE COURT: That's right. The 16th is the
13 trial on the issue of liability.

14 MR. SLATT: May I just note Your Honor
15 stated two possible formulations of the liability
16 issue; one was the delamination within a product and
17 second was a sale to a manufacturer. We would urge a
18 third be adopted under the policy.

19 THE COURT: That's fine.

20 MR. SLATT: Thank you. We didn't want to
21 be limited.

22 THE COURT: I think probably this thing
23 can be determined on the issue of liability on the
24 information that you have now available plus the
25 wording of the policy. If you have any additional

1 evidence, I want you to come out with a full
2 statement of what the witness will testify to just as
3 if you were asking him the questions on direct
4 examination; and attach to that statement the exhibits
5 on which your witness will rely.

6 MR. SLATT: Thank you, Your Honor.

7 MR. HOLLAND: That's to accompany the
8 brief?

9 THE COURT: That's to accompany the
10 answering brief.

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1 Trial

2 October 16, 1974

3 THE COURT: What is your name?

4 MR. SHAINSWIT: Seymour Shainswit. I'm
5 counsel for U.S. Plywood.

6 . THE COURT: You are attorney for plaintiff?

7 MR. SHAINSWIT: That's right, sir.

8 THE COURT: Who is here for the defendant?

9 MR. HART: Jack Hart and Cecil Holland.

10 THE COURT: You were here before?

11 MR. HOLLAND: Yes, Your Honor.

12 THE COURT: I have looked at all your
13 briefs.

14 MR. SHAINSWIT: Wonderful!

15 THE COURT: Let me see if I have the facts
16 right: Champion, which used to be U.S. Plywood, wants
17 to recover a million dollars on an insurance policy
18 issued to Champion issued by Continental Casualty
19 Company.

20 Champion is in the business of
21 selling panels, doors, siding and other construction
22 materials. I have had a lot of cases involving
23 Champion International and U.S. Plywood in Oregon.
24 They operate in Oregon a great deal. I have also had
25 a lot of cases involving Continental Casualty.

1 In 1969 and 1970, Champion bought vinyl-
2 covered panels from Continental Vinyl Products Corpora-
3 tion and sold the panels to manufacturers of mobile
4 homes and houseboats. The panels were used in the
5 interiors of the homes and boats. Many of the panels
6 were defective. They began to delaminate (the vinyl
7 peeled off), thereby causing damage to the homes and
8 boats. As a result, Champion became liable on property
9 damage claims by the manufacturers and buyers of more
10 than thirteen hundred vehicles. The total amount of
11 damages which Champion paid was approximately one point
12 six million dollars, although no damage to any one
13 vehicle amounted to as much as five thousand dollars.

14 During this period, Champion was covered
15 by a comprehensive general liability policy issued by
16 Liberty Mutual Insurance Company on an annual basis,
17 and an umbrella excess third party liability policy
18 issued by the defendant, Continental, covering the
19 period from November 30, 1967, to November 30, 1970.
20 The Liberty Mutual policy indemnified Champion for up
21 to one hundred thousand dollars paid by Champion in
22 "products hazard" damages caused by an occurrence, or
23 two hundred thousand dollars for more than one
24 occurrence, after Champion deducted five thousand
25 dollars per occurrence.

1 The umbrella excess policy indemni-
2 fied Champion for amounts paid by Champion in property
3 damages in excess of the amount recoverable under the
4 Liberty Mutual policy. The limit of Continental's
5 liability on any one occurrence was one million dollars.

6 Champion sought to recover from
7 Liberty Mutual and Continental the amounts it paid for
8 damages caused by the defective vinyl panels. Champion
9 claimed that all the damage was one "occurrence" as
10 defined in the insurance policy. Liberty Mutual did
11 not dispute this claim and paid Champion one hundred
12 thousand dollars after Champion deducted the first
13 five thousand dollars of damages.

14 Continental disputes Champion's
15 interpretation of the coverage of the policies.
16 Continental asserts that the damage to each vehicle was
17 a separate occurrence within the meaning of the policy.
18 Because no damage to any one vehicle amounted to as
19 much as five thousand dollars, the amount deductible
20 per occurrence under the Liberty Mutual policy, the
21 limits of Liberty Mutual's liability were not reached.

22 Now the question is: What the
23 meaning of the word "occurrence" is. Do I have the
24 issues right here?

25 MR. SHAINSWIT: That's apparent from our

1 briefs and I so recognize it.

2 THE COURT: Is there any dispute on the
3 legal proposition that any ambiguity in the policy
4 must be resolved against the insurance company?

5 MR. HART: I'm sorry, Your Honor, I didn't
6 hear that.

7 THE COURT: Is there any dispute on the
8 legal proposition that any ambiguity in the policy
9 must be resolved against the insurance company?

10 MR. HART: No, sir.

11 THE COURT: So, we are now concerned with
12 the meaning of the word "occurrence."

13 MR. SHAINSWIT: That's right. I may at
14 this time, Your Honor, focus on one thing that will
15 assist the Court in judicially interpreting the
16 insurance policy. It is a New York law which controls.
17 That's been accepted by both parties here.

18 Now in terms of New York law, since
19 Your Honor's statement has essentially completed the
20 basic resume of the central issue, I won't go into the
21 facts. I just want to point up the proposition of
22 New York law.

23 THE COURT: Did you cite all these cases
24 in your brief?

25 MR. SHAINSWIT: Yes, Your Honor.

1 Let me state the proposition -- I
2 won't burden the Court ----

3 THE COURT: So there won't be any mis-
4 understanding, I'm not interested in gobbledygook.
5 I am not interested in general propositions. I am
6 interested in cases.

7 MR. SHAINSWIT: Right.

8 THE COURT: I am interested in what the
9 cases say, so don't give me any hot air. You don't
10 have to give me anything like that. When you are
11 citing a proposition, tell me the name of the case
12 upon which you rely and the facts of that case.

13 MR. SHAINSWIT: Right. Very good, Your
14 Honor.

15 THE COURT: First tell me the name of the
16 case.

17 MR. SHAINSWIT: All right. The first case
18 that I want to flag for Your Honor is the Aetna
19 Casualty case. It's discussed at page 27 of our main
20 brief. In that case -- the reason I start with that
21 case, Your Honor, is it deals specifically with the
22 exact language that found its counterpart in the
23 Liberty Mutual policy which is all exposure to ----

24 THE COURT: Tell me the facts of the case.

25 MR. SHAINSWIT: All right. In that case

1 there had been a spasmodic emission of fly ash over a
2 period of many months which had caused damage to many
3 claimants from the deposit of the fly ash.

4 THE COURT: Are you talking about Judge
5 Kilkenny's case?

6 MR. SHAINSWIT: Yes, I was.

7 THE COURT: I was there when he tried the
8 case. I know that case.

9 MR. SHAINSWIT: I will cite it.

10 THE COURT: That's not a New York case.
11 He wrote that in Oregon.

12 MR. SHAINSWIT: In terms of the New York
13 law, Your Honor ----

14 THE COURT: I thought you were going to
15 tell me that was New York law.

16 MR. SHAINSWIT: Starting with the Second
17 Circuit opinion, which is the National Screen case,
18 that's the case we started with, Your Honor, in our
19 exposition of the law because that's the case where
20 the Second Circuit consolidated the various indices
21 of New York law, pointing out how controlling New York
22 law was in terms of defining questions.

23 THE COURT: That's the case you cite on
24 page 22 of your brief, isn't it?

25 MR. SHAINSWIT: Yes, Your Honor.

1 THE COURT: All right.

2 MR. SHAINSWIT: Now, the significance of
3 that case, Your Honor, is that it underscores that in
4 connection with the policy ----

5 THE COURT: Tell me the facts of the case.

6 MR. SHAINSWIT: In that case, Your Honor,
7 there had been damage to property that had been in
8 transit. National Screen was a distributor of mater-
9 ials that were used in connection with exhibition of
10 motion pictures.

11 Their containers were on a flat form
12 in a southern town; and, because of the heat and the
13 like, the containers exploded and there was a catas-
14 trophe. There is no other word to describe it.

15 The issue that arose in that case
16 was whether the policy had excluded coverage because
17 it had talked in terms of possession being relinquished.
18 And, the issue was whether National Screen had re-
19 linquished the possession of these containers or
20 whether it had constructive possession because these
21 containers ----

22 THE COURT: On what point are you citing
23 that? Is that on what an occurrence is?

24 MR. SHAINSWIT: I'm citing that, Your
25 Honor, on the point that the basic proposition of

1 New York law that the Second Circuit had emphasized,
2 which was in connection with construing any insurance
3 policy, the New York courts have emphasized that for
4 an insured to prevail, he has to establish that the
5 construction that he is proffering is the only
6 possible one.

7 THE COURT: Mr. Hart at the beginning said
8 in case of any ambiguity, the provision is to be
9 construed against the insurance company. If you're
10 doubting that, then you go ahead and argue it. He is
11 admitting your proposition. Why are you arguing the
12 case then?

13 MR. SHAINSWIT: All right.

14 THE COURT: We are not interested in
15 general law. We are interested in: What does the
16 provision occurrence mean as related to this particu-
17 lar situation.

18 MR. SHAINSWIT: All right. Your Honor,
19 what I am urging to the Court, let me be very explicit
20 about it.

21 THE COURT: That's what I want you to be.

22 MR. SHAINSWIT: All right, sir. In
23 connection with the interpretation and application of
24 this policy, there are three approaches to be taken.

25 First, the actual language of the

1 policy which, of course, is the clearest indexed and
2 clearest indexed for that understanding.

3 Secondly, you have the exposition of
4 the general rubric of insurance law.

5 Third are the authorities which deal
6 with the specific and precise language that's involved
7 in these policies.

8 Now, insofar as the exact language
9 of these policies are concerned, which is the phrase
10 continuing and repeated exposure to substantially the
11 same general conditions shall be considered one occur-
12 rence arising out of that policy, I don't believe that
13 there is a New York case which deals explicitly on
14 that very phraseology.

15 THE COURT: You have other cases?

16 MR. SHAINSWIT: I have other cases.

17 THE COURT: Tell me the names of those
18 other cases, other than the Aetna case.

19 MR. SHAINSWIT: There is the Grand River
20 Lime case.

21 THE COURT: Tell me the facts of that
22 case.

23 MR. SHAINSWIT: In the Grand River Lime
24 case -- if Your Honor will forgive me for just a
25 moment. That's at page 32 to 33 of our brief.

1 THE COURT: All right.

2 MR. SHAINSWIT: There had been two hundred
3 claims of property damage caused by Grand River in
4 acquiring a manufacturing operation as a result of the
5 emission of air pollution for a period of seven years.

6 The issue before the Court ----

7 THE COURT: Tell me those facts again.
8 What page are you telling me about?

9 MR. SHAINSWIT: 32, Your Honor.

10 THE COURT: Is that all of the facts in
11 that case?

12 MR. SHAINSWIT: The question before the
13 Court ----

14 THE COURT: I am not interested in the
15 question. Tell me what the facts are. Plaintiff
16 sued the defendant and these are the problems that they
17 incurred or were confronted with.

18 MR. SHAINSWIT: The question before the
19 Court was whether there was an occurrence within the
20 meaning.

21 THE COURT: Get me the case, Mr. Shainswit.
22 I am not interested in that, I just asked you a simple
23 question. Tell me all of the facts of the case.

24 MR. SHAINSWIT: I have the case right
25 here, Your Honor.

1 THE COURT: Have you got a copy of the
2 case?

3 MR. SHAINSWIT: Yes I have.

4 (Document handed to the Court.)

5 THE COURT: This is a case on summary
6 judgment. There are a million facts here that are
7 really important. Here is an insurance company that
8 refused to defend the company on a number of claims
9 filed against it. There were two causes of action;
10 one on occurrence and one on liability. The Court
11 there said the only thing they were deciding was that
12 the insurance company had the obligation to defend.
13 That doesn't mean they are liable at all.

14 MR. SHAINSWIT: But the significance of
15 the case, Your Honor, was in connection with what the
16 Court said in terms of the operator in part of the
17 unifying language. I am not saying the case was direct
18 in holding. I am saying it's dicta of the case.

19 THE COURT: That's why I told you from the
20 very start, don't give me what the Court said. If you
21 read those facts carefully, you will see it is not
22 directly in point. What other cases do you have? Why
23 don't you tell me the best cases you have that you
24 want me to read and I'll analyze them.

25 MR. SHAINSWIT: I will, all right.

1 THE COURT: Then I'm going to let you
2 engage in hot air for ten minutes and tell me why you
3 think you ought to win this case. Then I'm going to
4 give Mr. Hart the same opportunity without my restric-
5 tions on your telling me the facts of the case. Tell
6 me anything you want. I will give you ten minutes to
7 do it.

8 MR. SHAINSWIT: I welcome that, Judge.

9 THE COURT: You can make a jury argument.
10 You can throw as much sand as you want. Then I will
11 listen carefully.

12 MR. SHAINSWIT: If Your Honor please, I
13 respectfully focus on two cases that I asked the Court
14 to read. The first is the National Screen opinion
15 that I referred to and the Lipton case that I refer to
16 at page 35 of our main brief because I think that case
17 has application in connection with the factual setting
18 of our case.

19 THE COURT: That's a New York supplement
20 case?

21 MR. SHAINSWIT: That's a New York Court
22 of Appeals case. The highest court in New York which
23 was decided in June of '74.

24 THE COURT: Who wrote that opinion?

25 MR. SHAINSWIT: Now you've got me.

1 THE COURT: That's all right.

2 MR. SHAINSWIT: I'm trying to recall.

3 THE COURT: That's all right.

4 MR. SHAINSWIT: Let me now get back and
5 take advantage of Your Honor's offer in connection with
6 this.

7 THE COURT: Go ahead.

8 MR. SHAINSWIT: I want to focus on the
9 policy because I think no matter how you slice it from
10 the point of view of law and precedent and the like,
11 it's the policy that's in the index, judicial inter-
12 pretation as it is written in plain language; and, we
13 submit it's acceptable of the construction that is
14 urged by Plywood and under the rubric of New York law,
15 as long as we have proffered a reasonable construction,
16 that's the one that should be accepted by the Court.
17 Judge, could I reserve five minutes to reply?

18 THE COURT: Yes. Mr. Hart, do you want
19 five minutes to reply?

20 MR. HART: Yes. Your Honor, the basic
21 provision in the policy around the issue of construc-
22 tion resolves in the language in the Liberty Mutual
23 policy which recites: "...for the purpose of determ-
24 ining the limit of the company's liability, all
25 property damage arising out of continuous or repeated

1 exposure to substantially the same general conditions
2 ...shall be considered as arising out of one occurrence.

3 THE COURT: Mr. Hart, I don't want to
4 interrupt you. I didn't think we were concerned with
5 the construction of the Liberty Mutual policy. I
6 thought we were concerned with the construction of ----

7 MR. HART: The C&A policy?

8 MR. SHAINSWIT: Let me clarify that, Your
9 Honor, with Mr. Hart's permission, and define the
10 position that divides us.

11 THE COURT: Okay.

12 MR. SHAINSWIT: The Liberty Mutual policy
13 had a limit liability of one hundred thousand dollars
14 per occurrence. There was also an endorsement of the
15 Liberty Mutual policy that in connection with the
16 product have coverage, there was a deductible amount of
17 five thousand dollars per occurrence.

18 THE COURT: That's the Liberty Mutual?

19 MR. SHAINSWIT: C&A, I refer to Continen-
20 tal Casualty, picked up where the Liberty Mutual policy
21 left off.

22 THE COURT: In the same policy?

23 MR. SHAINSWIT: There is a separate
24 policy which is called the umbrella excess policy
25 which provided coverage to Plywood for a million

1 dollars in excess of the amount recoverable under the
2 Liberty Mutual policy, which is one hundred thousand
3 dollars.

4 THE COURT: Let me see the Continental
5 policy.

6 MR. SHAINSWIT: We have really two poli-
7 cies; you have both of them. This is the C&A policy.
8 This is the policy that we are suing Continental on.

9 THE COURT: Maybe Mr. Hart will admit this.
10 Are you bound by the terms of the Liberty Mutual policy?

11 MR. HART: Yes, sir.

12 THE COURT: Then you don't have to argue
13 the meaning of the word "occurrence." There is no
14 problem about that.

15 MR. SHAINSWIT: Thank you very much.

16 THE COURT: I like this kind of operation
17 with no foolishness. If the thing is true, admit it.
18 Go ahead.

19 MR. SHAINSWIT: Now, getting back to the
20 Liberty Mutual policy with all of its references to
21 occurrence, the dispute between us is that C&A argues
22 that Liberty Mutual didn't properly construe its own
23 policy and in treating what transpired in this case
24 as an occurrence and paying Champion the one hundred
25 thousand dollars, according to C&A's proper reading

1 of the Liberty Mutual policy, C&A is, in effect,
2 arguing that Liberty Mutual should have litigated with
3 Champion and should have contended there wasn't one
4 occurrence here, but multiple occurrence; that the
5 damage to each vehicle of these fourteen hundred
6 vehicles, should be equated as a separate occurrence.

7 THE COURT: Aren't they permitted to do
8 that?

9 MR. SHAINSWIT: I am not questioning
10 their right to come forward and make that argument.

11 THE COURT: That is not an admission
12 against interest, is it?

13 MR. SHAINSWIT: I'm saying, nevertheless,
14 the Court is entitled to take into consideration the
15 fact that the carrier that issued the policy has given
16 its own practical construction. I'm not saying it's
17 conclusive on the part of C&A or that it's conclusive
18 on the part of the Court, but it certainly establishes,
19 to some extent, that there is a possible reasonable
20 construction of the policy because that is the basis
21 on which the primary carrier was interpreting that
22 policy.

23 THE COURT: Mr. Shainswit, you have
24 represented insurance companies over a period of time,
25 haven't you?

1 MR. SHAINSWIT: Insurance companies?

2 THE COURT: Yes.

3 MR. SHAINSWIT: It's been my most mis-
4 fortune not to.

5 THE COURT: You know insurance companies,
6 many times, pay the face of the policy for policy
7 reasons. There are all kinds of reasons. Champion
8 may have given Liberty Mutual a million dollars of
9 premiums a year. They were to stretch the meaning of
10 it.

11 MR. SHAINSWIT: No question about it. But
12 I think also that as a part of a balanced business
13 judgment, a primary carrier is entitled to make and
14 also entitled to consider whether it makes sense for
15 them to jeopardize a business policy or even future
16 business arrangements in a setting where all the
17 canons of construction of New York insurance law, you
18 know, exists against them; and, I think no insurance
19 company could be sensible if it said, "We resist in
20 all events; and, we'll continue to lose." I think
21 it's part of the backdrop in terms of evaluating.

22 THE COURT: Why don't you tell me what the
23 word "occurrence" means?

24 MR. SHAINSWIT: All right. Now, let me
25 do it in terms of the policy itself. Before we get

1 to the unifying definition, and I'm talking now about
2 the Liberty Mutual policy, "occurrence" is defined as
3 injurious exposure to conditions which result in pro-
4 perty damage -- I'm sorry, that's not the definition
5 of it.

6 THE COURT: I will read it.

7 "Occurrence means an accident,
8 including injurious exposure to conditions, which
9 results during the policy period, in bodily injury or
10 property damage neither expected nor intended from the
11 standpoint of the insured."

12 MR. SHAINSWIT: Right.

13 THE COURT: All right.

14 MR. SHAINSWIT: As we reveiw, as a matter
15 of fact, pages 13 and 14 of our main brief, I set
16 forth in full the definition including the definition
17 that Mr. Hart just gave, which, of course, is from the
18 policy itself.

19 Now, what we point out respectfully
20 to Your Honor is that the broad definition of occur-
21 rence, as including injurious exposure to conditions,
22 reasonably connotes that the injurious exposure could
23 take place over an extended period of time.

24 Now, this is fortified by subsequent
25 provisions in the policy, demonstrating what the

1 draftsman of the policy had in mind and talking in
2 terms of exposure of conditions resulting in property
3 damage. That could continue for days, weeks, months,
4 or even years because endorsement numbered one, which
5 we quote at page 14 of our main brief, provided if the
6 same occurrence gives rise to property damage which
7 occurs partly before and partly within a policy period
8 that the amount of payment that Liberty Mutual has
9 made with respect to occurrence under a previous
10 policy will be applicable in subsequent replacement
11 policy periods. So, the policy made it plain that in
12 connection with an occurrence, which may result in
13 continuing property damage, where the Liberty Mutual
14 Insurance arrangements with U.S. Plywood were to have
15 policy from year to year, that if you had an occurrence
16 which resulted in property damage that spilled over
17 into a second policy period, you would still have only
18 one limitation.

19 THE COURT: Mr. Shainswit, I want to make
20 a suggestion to you. Why don't you let Mr. Hart talk
21 and tell why he thinks the policy doesn't cover. Then
22 you can answer him.

23 MR. SHAINSWIT: Very good; I'm sorry.

24 MR. HART: Respectfully, Your Honor, I
25 believe the problem presented is not what is an

1 occurrence. I think we can easily agree on that. I
2 think the question presented in this case is: How many
3 occurrences were there. On behalf of Continental, we
4 are admitting that what happened here, namely, the
5 delamination of plywood panels after they had been
6 installed in interiors of mobile units, that we are
7 admitting, Your Honor, that, let us say, if you had one
8 mobile unit and you installed some plywood panel and
9 the plywood panel delaminated, that event of the
10 delamination constituted an occurrence. We admit that.
11 It constitutes an occurrence within the product liability
12 coverage of the policy, so that if under the terms
13 of the policy, enough damage has been caused to call
14 into play the obligation of the insurance company,
15 then we are indeed looking in a delaminated plywood
16 panel inside a mobile unit having an occurrence which
17 is a product liability type of damage. Now we are
18 admitting that.

19 THE COURT: Mr. Hart, in other words, you
20 are saying instead of these mobile homes and automob-
21 iles and things of that kind, there were elaborate
22 yachts and five of them had the same thing and each of
23 them suffered one hundred thousand dollar damage, you
24 would be liable; but instead of five yachts there were
25 two hundred automobiles or mobile homes that you are

1 not liable?

2 MR. HART: I think that is essentially
3 so, and the difference, of course, Your Honor, is --
4 it comes from keeping in mind there are three levels
5 of coverage here. You begin with the retention of the
6 deductible by the insurer of five thousand dollars per
7 occurrence. So if you have an occurrence which I think
8 can be called an accident, then if you have an occur-
9 rence, accident, and the damage caused to other
10 property, of course, is less than five thousand
11 dollars, then Champion is a self-insurer.

12 THE COURT: Do you have a case which says
13 where a cause results in numerous damages, you don't
14 consider the cause of the damage, but you must consider
15 the results of the damage? Have you got a case of that
16 kind?

17 MR. HART: I think that the Johnson case,
18 New York Court of Appeals case ----

19 THE COURT: Tell me the facts of the case.

20 MR. HART: In Johnson, there was a rainfall,
21 very heavy rainfall; everybody admits that that was the
22 cause of what subsequently happened.

23 THE COURT: What kind of policy was issued?

24 MR. HART: General liability policy just
25 like this.

1 THE COURT: An occurrence?

2 MR. HART: Yes, sir.

3 THE COURT: Okay.

4 MR. HART: In that Johnson case, there was
5 one occurrence or more than one. The reason is the
6 same; the amount is limited in the policy for one
7 occurrence, and then there is an amount for negligence;
8 if you can show more than one occurrence, then you come
9 into the act. There was no deductible provision in
10 that policy. Of course, in our case we do have that
11 deductible which the crux of our policy lies.

12 In the Johnson case, there was a
13 most unusually heavy rainfall in the City of New York.
14 The same contractor was working on two adjoining
15 buildings; having dug a ditch, then in order to pro-
16 tect the basement, the contractor put up retaining
17 walls to keep out water because of the heavy rainfall;
18 it was unprecedented in New York. First the one wall
19 collapsed and then in the adjoining building, about
20 fifty minutes later, another wall collapsed.

21 The question was: Do you have one
22 occurrence or two occurrences.

23 THE COURT: Why was that necessary to
24 decide, because of the limits of the policy?

25 MR. HART: Yes. If there is one occurrence,

1 then both collapses would be limited to the amount
2 payable for one occurrence.

3 THE COURT: So the Court construed the
4 policy against the insurance company and said: "There
5 were two occurrences."

6 MR. HART: Yes, sir. If I may, the
7 Johnson case was followed in New York by a Hartford
8 case, Hartford Accident case, which shows the contract
9 in dealing with the question presented in Johnson.
10 There the Court held the other way. They held in an
11 automobile type accident which I will describe in a
12 moment, that there was only one occurrence; and, they
13 distinguished Johnson.

14 Now, in the Hartford case, some
15 automobile coming along in the road, going pretty fast,
16 hit a car and then bounced off some hundred feet or so
17 and then hit another car. And, the question was, in
18 New York, is that one occurrence or two occurrences,
19 one accident or two accidents; the same reason, limit
20 of liability. If it's one accident, the insurance
21 company will be limited to amount payable; if it's more
22 than one accident, then, of course, they would be
23 paying for more than one accident.

24 The Court there held there was only
25 one accident.

1 In New York, what they say is: You
2 can, in determining what an accident is -- everybody
3 agrees that an accident is an event which unexpectedly
4 and unintentionally causes personal injury or damage.

5 THE COURT: Mr. Hart, is there any dis-
6 tinction between an act of the manufacturer or your
7 assured and an act that results from outside forces
8 like rain or what we call an act of God; is there a
9 distinction made in those two?

10 MR. HART: I'm sorry, Your Honor, when I
11 refer to the rain in the Johnson case, I think the
12 point was that the wall put up by the contractor was
13 inadequate to prevent the rain from breaking the wall
14 down. The accident consisted in the collapsing of the
15 wall. The Court made clear that the accident was the
16 collapsing of the wall. I should have made that clear.
17 But that's what they said.

18 If you have an explosion, nobody has
19 any doubt you have an accident.

20 THE COURT: What year was that case?

21 MR. HART: The Johnson case was in '59, as
22 I recall; and, the subsequent case was '73, which
23 reaffirmed the Johnson case, of course, but contrasted
24 it with the automobile case. You're talking there
25 about how many are you looking at? How do you

1 determine whether you have one accident or more,
2 because in our case, the crux of the entire problem is
3 this: If you have a thousand accidents or two hundred
4 or whatever, then each one will be subject to a five
5 thousand dollar deductible. If you did not have a
6 deductible in this case, you would have a different
7 type of situation and whether we would be here at all,
8 I do not know. The question is: Did the insured
9 retain, by his policy, all of the damage that happened
10 in this case for which it became liable; that's the
11 question, because if it did, then they do not reach
12 Liberty Mutual. In other words, if the deductible is
13 not exhausted, then the Liberty Mutual policy is never
14 called upon; and if the Liberty Mutual policy is not
15 exhausted, then the umbrella excess policy is never
16 called upon. You have those three steps of coverage.

17 So we deal then with how many
18 occurrences in order to determine how many deductibles,
19 otherwise, there would be no problem.

20 Now in this case, as it happens, of
21 course, Champion is a big company. It has a full-time
22 so-called manager of directors of risk management; and,
23 they were represented here as appears on the face of
24 the policy by a brokerage firm, Marsh & McLennan; Your
25 Honor may know them.

1 THE COURT: I just held in a case recently
2 that the Travelers Insurance Company cannot hide behind
3 a policy, the words which were written by Marsh &
4 McLennan, but it is liable for the act; this is what
5 they called a manuscript. This involved a general word
6 just like this one does, affiliated and associated.
7 The Travelers Insurance Company said, "Marsh & McLennan
8 are the most experienced people in the business. This
9 was their word, therefore, we are not bound by the
10 general rules of construction. This means Marsh &
11 McLennan was representing Pacific Power & Light Company."
12 I said, "Under the rules, Marsh & McLennan, having
13 received their money from the Travelers Insurance
14 Company, is the agent of Travelers Insurance Company
15 for all purposes."

16 MR. HART: Of course, that wasn't the case
17 here. I don't make any big point about that. My only
18 point is this: If you look at the first -- the cover
19 page of the umbrella excess policy, it will specify
20 that the twenty-three underlying policies -- because
21 this umbrella policy was not confined to the general
22 comprehensive liability policy which Liberty Mutual
23 had ----

24 THE COURT: Have you got another case,
25 Mr. Hart?

1 MR. HART: Your Honor, I mentioned Johnson.
2 May I say in response to Your Honor's question about do
3 I have a New York case that discusses how many occur-
4 rences, so I mentioned Johnson.

5 Now, on the question of how many
6 occurrences, I think the closest case that we have been
7 able to find on the precise question presented here was
8 a case decided in the Western District of Michigan in
9 1960. Then that was affirmed on the opinion below by
10 the Sixth Circuit in 1961.

11 In that case, a warehouseman policy
12 was involved. Four thousand two hundred dryers and
13 combinations of washer-dryer appliances were damaged
14 by a defective fork-lift truck over a period of months.
15 As they moved the appliances, the washers and so on,
16 the fork-lift truck would pick them up and move them
17 from one place to another, as they did that, over a
18 period of time, there were damages caused to forty-two
19 hundred separate appliances. In that case, there was a
20 twenty-five hundred dollar per occurrence deductible;
21 and, the parties there agreed that the damage to no
22 single appliance amounted to as much as twenty-five
23 hundred dollars, clearly depositing the question of,
24 "how many occurrences do you have." If each one is a
25 separate occurrence, then the insured would not

1 recover. If not, then, of course, the insured will
2 recover.

3 The Court held each damaged appli-
4 ance was a separate occurrence.

5 THE COURT: What page is that on?

6 MR. HART: It appears on page 19 of our
7 main brief. Would Your Honor like to see the case
8 itself?

9 THE COURT: Yes.

10 (Handed.)

11 This case looks quite in point. I
12 have got to analyze it carefully. You do meet the
13 problem. I was wondering whether the New York law is
14 any different than the Michigan law. Apparently they
15 adopt the rule that in the case of ambiguity and doubt
16 as to the meaning of language used in the insurance
17 policy should be construed in favor of the insured.
18 There is one possible distinction; here it was the
19 fork-lift that was operated by human hands over a per-
20 iod of weeks; that might be a distinction between that
21 case and this one where it was the material itself
22 which caused the damage.

23 MR. HART: The material, however, Your
24 Honor, was purchased by Champion and sold by Champion
25 over a period of many months in two separate annual

1 policy periods installed in mobile homes and so on
2 over a period of many months in different parts of the
3 country by different manufacturing companies over a
4 period of many months.

5 THE COURT: I realize that.

6 MR. HART: Yes, sir. I would say, however,
7 Your Honor, ----

8 THE COURT: I'm just saying this isn't the
9 best case in point on the problem I have to decide.

10 MR. HART: I think when Your Honor comes
11 to analyze the problem here, that type of case may not
12 turn out to be dispositive. I wish I could say it
13 would be. I think the analysis of the policy here
14 would require the Court to go one step further.

15 If I follow the plaintiff's position,
16 it would not be enough, I would state for them, I
17 think it would come out this way, I don't know if they
18 stated it in their brief, but I believe it to be so;
19 they are saying to the Court that if Your Honor should
20 find that there were fourteen hundred separate occur-
21 rences or accidents in this case, if you should so
22 find, this would not be dispositive of their claims if
23 I'm following them. They say that if you found that
24 way, then sure there would be fourteen hundred occur-
25 rences and the policy says there is a deductible of

1 five thousand dollars for each occurrence and we agree,
2 they would say, no loss was more than five thousand;
3 nevertheless, they will say, I think that's the way the
4 argument comes out, nevertheless, you must find our way
5 because there is one clause in the policy which, if you
6 assume all the others, takes us out of our, what would
7 otherwise appear to be stated the way I just did, and
8 makes all of this one occurrence; and, that clause,
9 they pick out ----

10 THE COURT: I think I have it: "If the
11 same occurrence gives rise to personal injury or pro-
12 perty damage...".

13 MR. HART: No, they say, "For the purpose
14 of determining the limit of the company's liability...
15 all...property damage arising out of continuous or
16 repeated exposure to substantially the same general
17 condition...shall be considered as arising out of one
18 occurrence. That's what I think they are talking
19 about. Then that brings the Court to the question
20 when you pick up that language, what is the meaning
21 of those words "All personal injuries and property
22 damage arising out of continuous or repeated exposure
23 to substantially the same general condition." Well,
24 the words first appear in the policy at the point that
25 Your Honor referred to earlier when you read the des-

1 cription, the definition of occurrence. An occurrence,
2 it says -- I don't have the words here before me, "...
3 is an accident including..." it says, "...including
4 continuous or repeated exposure..." ----

5 THE COURT: Mr. Hart, was this same type
6 of provision in the Michigan case?

7 MR. HART: I don't have it. So, I cannot
8 tell you.

9 MR. SHAINSWIT: Your Honor, I will respond
10 to that one when I reply.

11 MR. HART: If it was or wasn't, I don't
12 happen to know. I believe that it always has been from
13 the time that they added these words in order to
14 overcome the contentions that were being made by
15 insurance companies; and, they always got slapped down,
16 that if an accident did not have an element of sudden-
17 ness to it like an explosion, then it was not an
18 accident. Well, all of the Courts, and I think quite
19 properly said an accident is an event that unexpectedly
20 causes damage. And, if it unexpectedly causes damage,
21 like a defective X-ray machine and it takes two or
22 three months, don't tell us it's not an accident. So
23 then, when they define the occurrence as an accident,
24 they said, "An accident includes the damage caused by
25 being exposed."

1 THE COURT: I have been concerned over a
2 period of time about the use of general language. I
3 know that insurance companies have to use some general
4 language. You can't anticipate every possible thing.
5 But where the cases have been holding as they have and
6 even in this Michigan case where you get that kind of
7 result and then they put in a provision of the kind
8 that appears in this policy, isn't that provision
9 designed to overcome the advantage which the insurance
10 company obtained in a decision like the Michigan case?

11 MR. HART: No, Your Honor, I respectfully
12 say this.

13 THE COURT: Why didn't they leave the
14 policy alone then?

15 MR. HART: I am not about to say they did
16 not. The question of how many occurrences there are,
17 I do not think in many cases would give a serious
18 problem; an occurrence is an accident. Of course, you
19 can have problems like the one I described in the
20 Johnson case. You know, how many were there? But
21 most of the time, I think there isn't too much question
22 about how many accidents there were.

23 The question, as presented here
24 is: How much did the insurance company have to pay? Or,
25 to put it as it happens in this case: How much was

1 retained by the insured? What did the insured say it
2 would retain under the product hazard, which is one of
3 the coverages in the Liberty Mutual policy. If they
4 came into damage under the product hazard, which this
5 is, they have a five thousand dollar deductible; what
6 the plaintiff tells you and submits to you is: from
7 the moment they buy the policy, into the indefinite
8 future, all of the damage they become liable for that
9 results from a similar cause like the delaminated
10 panels, collapsing floors, like falling ceilings, any
11 and all times, no matter how long into the future, will
12 constitute one occurrence.

13 THE COURT: Why did you put in the next
14 provision? You read one section, but you didn't read
15 the next section which limits your liability by
16 reducing it each time, doesn't it?

17 MR. HART: No, sir.

18 THE COURT: "If the same occurrence gives
19 rise to...property damage which occurs partly before
20 ..." you are familiar with that language.

21 MR. HART: I have called it to the Court's
22 attention because that's what they are relying on.

23 THE COURT: The next paragraph, which
24 limits your liability says over a period of years, to
25 prevent that parade of horror ----

1 MR. HART: No. We say in our first brief
2 -- the next thing I now look at and Mr. Shainswit
3 mentioned it, I think the meaning of that is as clear
4 as anything can be because contrary to their contention,
5 one of their contentions by the way is that if an
6 occurrence happens in one year and then in another
7 policy period, the second policy period doesn't pay
8 anything. The reason is that you have only one
9 occurrence; it happens when something happens and
10 everything that is similar after that, no matter how
11 far, goes that way; this is precisely to the contrary.
12 The limit of liability intended by that paragraph, I
13 think is perfectly clear; may I give an illustration?

14 THE COURT: When somebody tells me it's
15 perfectly plain, clear and concise, then I get worried.

16 MR. HART: I think you have the right to
17 get worried. I think, Your Honor, I can overcome the
18 worry.

19 THE COURT: All right.

20 MR. HART: I stick my neck out when I say
21 that. As the language is read, let us take this very
22 situation, you have a Liberty Mutual policy and it's
23 on an annual basis; let's assume that it's got a
24 thirty thousand dollar per occurrence, twenty thousand,
25 it doesn't make any difference per occurrence; the law,

1 unquestionably is clear in New York, it's the Palardy
2 case, in the Second Circuit, the language of the Court
3 is the time of the occurrence is at the time when the
4 damage is in effect. So in the Palardy case, what
5 happened was a manufacturer of ladders turned out
6 defective ladders during the policy period. Then the
7 policy period lapsed. The policy was not renewed; and,
8 in the following year, the ladder collapsed and some-
9 body was hurt; now the claim against the insurance
10 company, because the ladder was manufactured and sold
11 in the policy period, the accident happened when the
12 policy had been terminated, question: Was there
13 coverage? The Second Circuit said: "The words are very
14 clear; the accident must have happened in the policy
15 period. This accident did not happen in the policy
16 period, no coverage." We have cited that case. But,
17 what I was coming to, that accident happened in the
18 policy period or else there is no coverage. Then
19 consider a case where you have an accident which is
20 not sudden; as for example, escaping fumes, let's say
21 from an oil burner which are undetected for a while.
22 Let's suppose that that accident that one oil burner,
23 not one three blocks away of a similar type, but that
24 one, began to give out its fumes, let's say three days
25 before the expiration of a policy period. Liberty

1 Mutual, which has a thirty thousand dollar limit, let's
2 say, now they detect the defective oil burner five days
3 into the next policy period; and, in those next five
4 days, additional damage is caused. Now, I do not think
5 there would be any doubt on the case like the Palardy
6 that I just mentioned in the Second Circuit, that the
7 first policy would answer for the damage caused in the
8 first three days and the second policy would answer for
9 the damage caused in the next five days. Then, if you
10 did that, however, instead of having one per occur-
11 rence limit, because you would have only one occurrence,
12 namely the conditions caused by that defective oil
13 burner, over a period of eight days before it's
14 detected; instead of having one limit of liability per
15 occurrence, you would have two. Instead of having a
16 thirty thousand dollar coverage, you would have sixty
17 thousand for the obvious purpose to have a thirty
18 thousand dollar limit. I respectfully submit to Your
19 Honor that the language that I just said is clear,
20 read with what I just said in mind, is in fact, clear.

21 THE COURT: Mr. Hart, let's go back into
22 the language you first read; you said you thought this
23 was their main point: "All personal injury or property
24 damage arising out of continued or repeated exposure
25 to substantially the same general conditions shall be

1 considered as arising out of one occurrence." Why
2 doesn't that cover this situation precisely? Let me
3 make another statement.

4 MR. HART: Yes.

5 THE COURT: When an insured buys a
6 policy, isn't he entitled to know the limit of his
7 coverage? If you knew about this case in these other
8 states, why couldn't you have set out that if Champion
9 manufactured a defective commodity, which in turn
10 caused a great deal of damage, this policy doesn't
11 cover unless each damage results in a loss in excess
12 of five thousand dollars? You had within your power
13 to specifically exclude this particular type of risk,
14 but you elected not to do it.

15 MR. HART: I think, Your Honor, I will
16 respectfully disagree.

17 THE COURT: You don't have to be respect-
18 fully to me; just tell me the facts.

19 MR. HART: I do not think that we confront
20 an ambiguity. I don't think so. I know Your Honor
21 believes at the least it's an ambiguity and probably
22 goes the other way against me. But, I do not believe,
23 as I say, there is ambiguity. I do not believe that
24 as you read the policy you can come up with an
25 ambiguity about the meaning of these words, because,

1 Your Honor, you start with this: This is an accident
2 policy; therefore, you start with the definition of
3 accident.

4 Your Honor started out by reading
5 that earlier today. You read then the occurrence.
6 An occurrence is an accident. It says it includes an
7 accident, including in the term of an accident. Now
8 I add some words, the damages, resulting, because we
9 are always talking about damage to something else;
10 nobody suggested anything but that. So now you are
11 talking about the damages to a trailer, let's say.
12 Then if a trailer is damaged or an apartment by a
13 defective boiler, that's what you're talking about,
14 something else being exposed repeatedly as an X-ray
15 machine or continuously to the conditions caused.
16 That's an accident; and, the Courts have been holding
17 that for some time. It doesn't have to be sudden.
18 That's all it's saying. That's what that language
19 means. That language is put in for no other purpose.

20 Now you come to the limiting your
21 liability; you limit your liability by saying if you
22 have one occurrence, not two or four or seven, then
23 you have a limit of liability for one occurrence.
24 But, as it says: An accident includes exposure to the
25 same or similar conditions, whether you don't have it

1 sudden, that is an accident, too.

2 To clarify that, an occurrence is
3 an accident which results from the exposure to the same
4 general condition created by the event, you will have
5 one limit of liability; that's what that language does
6 carry right through.

7 THE COURT: Do you concede what Mr.
8 Shainswit has said, that if language can be reasonably
9 construed to cover his particular situation, that it
10 is to be so construed under New York law?

11 MR. HART: Well, whether I go that far or
12 not as stated, I don't know. It will turn out that
13 way practically, I believe. I would not seriously
14 dispute that.

15 THE COURT: Then you must contend that the
16 reading of the policy, in the manner in which Mr.
17 Shainswit has read it, is an unreasonable construction.

18 MR. HART: Yes, sir. That's certainly so,
19 yes.

20 THE COURT: You say also that this language
21 cannot be so reasonably construed?

22 MR. HART: Yes, sir. Of course, that's
23 what we say. Your Honor, for example, if you construe
24 it the way they suggest, meaning that all the damage
25 is caused by similar defective conditions constitutes

1 one occurrence, no matter when they take place, aren't
2 they then eliminating their coverage after they paid
3 once? Can anybody possibly believe it that way or
4 consider if you do not have the deductible, would any
5 insured ever take this position?

6 THE COURT: You come within the provision
7 of a statement I made some years ago when I decided in
8 favor of Travelers Indemnity Company in an action
9 brought by Georgia Pacific in which I said, "Travelers
10 could have avoided the risk of ambiguity if its drafts-
11 man had used short and simple sentences with short and
12 precise words which clearly expressed the intent of the
13 parties clearly. However, Courts should not penalize
14 insurance companies for using long and complicated
15 sentences with showy words and legal jargon when a
16 careful examination of that language in the entire
17 policy as well as circumstances under which the policy
18 was executed clearly reveals the intention of the
19 parties.

20 MR. HART: Well, thank you. I believe that
21 is so. I suggest to Your Honor about the reasonableness
22 of the construction that sometime it helps to try it
23 the other way. If you assume no deductible, and of
24 course, it doesn't have to be a deductible and the
25 deductible applies, did it apply only to the product?

1 It applies only to the product; only to the product
2 damaged if a product inflicted bodily injury, for
3 example, plywood manufacturers or manufacturers for
4 packages for cosmetics and pharmaceuticals, the
5 deductibles would not apply

6 THE COURT: I don't doubt that the purpose
7 of the exclusion was proper. If I find in favor of
8 Champion, I'm saying they are entitled to recover for
9 the consequences of their own wrong. They produced
10 that defective material.

11 MR. SHAINSWIT: We acquired it from
12 Continental. We had no control over the manufacturing
13 process nor could we internally guard against the
14 hazard.

15 MR. HART: We would agree, Your Honor, we
16 insured against their own negligence. I think that's
17 what they wanted to be insured against and their own
18 breach of warranty. There is no doubt about that, but
19 only because damage to others, not for the property
20 itself. But, just consider if they did not have a
21 deductible and suppose now we are talking about any
22 other kind of hazard covered by the comprehensive
23 general liability policy of which this hazard was one,
24 would they say, for example, that if they purchased
25 forty-two different machines, let's say, with

1 defective gauges and they installed them in forty-two
2 different places in this country and there were forty-
3 two separate explosions, all caused by the same type of
4 defective gauge, causing personal injury or property
5 damage, would they say, not having deductible, "Well,
6 of course, that's only one occurrence because it all
7 comes from a similar cause"? No chance of that. They
8 would never buy a policy like that. Nobody would ever
9 understand it to mean that; no insured would understand
10 it to mean that.

11 But here, everybody involved knew
12 that there was a five thousand dollar deductible per
13 occurrence confined to the product hazard, not to
14 anything else. If it was a product liability case,
15 then you had the deductible.

16 THE COURT: Let me ask Mr. Shainswit about
17 that. What about the example Mr. Hart made about the
18 gauge?

19 MR. SHAINSWIT: Multiple explosions, I
20 would say that the common expectation of anyone reading
21 that policy would be that you did have.

22 THE COURT: Under his example, your com-
23 pany manufactured forty-two gauges, all containing
24 this defect. Then it installed them throughout the
25 country. Each one of them fails.

1 MR. SHAINSWIT: He is talking in terms of
2 an explosion, Your Honor.

3 THE COURT: But you are talking in terms
4 of damage to a trailer, all of which resulted from the
5 manufacture of a certain ingredient.

6 MR. SHAINSWIT: I would say the unifying
7 definition in it, if we had the Liberty Mutual policy,
8 and if we had that unifying definition that all con-
9 tinuous and repeated exposure ----

10 THE COURT: Would it cover the gauge also?

11 MR. SHAINSWIT: Probably; if it's
12 interpreted under the facts as exposure to substan-
13 tially the same general conditions.

14 Now, remember, Your Honor, from
15 the point of view of what we have here, in terms of
16 packages of insurance and where he is talking in the
17 sense of not having a deductible, we had the Liberty
18 Mutual Insurance; we had the C & A insurance which
19 went up to a million dollars; and,,even above C & A,
20 we had Lloyds of London that would pick up for several
21 millions above that. So, we are dealing with a com-
22 prehensive insurance package to cover all possible
23 kinds of product hazards. If I may, Your Honor, if
24 Your Honor would be patient with me, I'd like to deal
25 with the four facts I think he brought out. I'd like

1 to deal with them headon.

2 THE COURT: All right.

3 MR. SHAINSWIT: Let's take the thing which
4 he said was the crux of his case, which is the provi-
5 sion endorsement numbered eight of the Liberty Mutual
6 policy, which calls for the deductibility of five
7 thousand dollars per occurrence. Now we reproduced
8 the text of the endorsement. I would like Your Honor
9 to look at it at this juncture.

10 THE COURT: What page are you on?

11 MR. SHAINSWIT: Pardon me, Judge, may I
12 come up to the bench? I will hand you mine. This is
13 the endorsement which are in consecutive order as yours.
14 May I find it on your page?

15 THE COURT: Yes.

16 MR. SHAINSWIT: This endorsement numbered
17 eight, the endorsement runs consecutive.

18 THE COURT: I have that.

19 MR. SHAINSWIT: Now Your Honor will note
20 the principal of the mutual form provides in connection
21 with the designation of the deductible, whether it
22 shall be applicable to a per claim or per occurrence
23 -- you see that, Your Honor?

24 THE COURT: Yes.

25 MR. SHAINSWIT: Now, when you go to the

1 per occurrence basis, which is the one that was chosen,
2 it says the deductible amount applies under the bodily
3 injury liability on property liability coverage
4 respectively to all damage because of all bodily injury
5 or property damage as the result of any one occurrence.
6 What I'm saying, Your Honor, if I may, first, there is
7 a threshold significance to meeting his argument that
8 each incident of damage should be treated as a separate
9 occurrence. Here where the form itself provides for a
10 per claim or per occurrence, a per claim is rejected
11 and per occurrence is utilized; now he is coming along
12 and saying that he wants to treat this not only as a
13 per claim occurrence basis, but really that each
14 separate incident of liability shall be treated as a
15 separate claim with respect to which the deductible
16 shall be applied.

17 I think the very format in which
18 the deductible amount is designated reinforces the
19 application of the other language in the definition
20 or provision. It certainly does not support his
21 reading that he focuses on this section and says this
22 section and this deductible amount indicates that each
23 incident of damage could be equated as an occurrence
24 subject to a deductible amount. Per occurrence basis
25 says all damage, not each incidence of damage, shall

1 be subject to the deductible amount.

2 I go back to what Your Honor
3 observed just a few minutes ago, that if there were
4 any intent, if there were any basis for the insurer
5 to tell the insured that each incident of damage shall
6 be subject to a deductible amount, that was the place
7 to put it in. But rather, when they say that all of
8 the property damage resulting from one occurrence
9 shall be subject to the deductible amount and then you
10 have the unifying definition that all continuous or
11 repeated exposure to substantially the same general
12 conditions shall be considered as arising out of one
13 occurrence, then the deductible amount of five thousand
14 dollars is in connection with all the resultant property
15 damage arising out of the repeated exposure to sub-
16 stantially the same general conditions.

17 THE COURT: I see Champion bought these
18 vinyl panels ----

19 MR. SHAINSWIT: From Continental Vinyl.

20 THE COURT: Your situation would have much
21 more force if the one vinyl panel caused a lot of
22 damage; but they bought hundreds of vinyl panels over
23 a period of time. Would you say that was one occur-
24 rence, the purchase of each of the vinyl panels?

25 MR. SHAINSWIT: If Your Honor please ----

1 THE COURT: You can stay right there and
2 tell me.

3 MR. SHAINSWIT: What I'm saying, Your
4 Honor, is that the purpose of this unifying definition
5 was to bring together the problems in connection with
6 occurrence which involves a common factor. Let me
7 translate it in terms of our case and in terms of the
8 policy language.

9 All diminution in value, that's
10 the property damage, resulting from the continuous or
11 repeated installation by manufacturers of a completed
12 product, that's the exposure, of defective panels
13 manufactured by one source, Continental Vinyl, which
14 inexorably was delaminated, that same general condition
15 constitutes property damage arising out of one occur-
16 rence within the meaning of the Liberty Mutual policy.
17 That's our position.

18 THE COURT: This is a serious problem. I
19 came here this morning with somewhat of a bias view
20 in your favor, to tell you the truth in looking over
21 the policy and over my general views on the failure of
22 insurance companies to hire somebody who knows how to
23 write English. But I see the problem here has many
24 more ramifications than I earlier anticipated. I
25 would be grateful to both of you if on the basis of our

1 discussion and my ignorance and some of the questions
2 I asked, if you would now set out in a very short and
3 clear concise statement the crux of your argument
4 together with the names of the cases upon which you
5 rely. We are going to check them. Then at the con-
6 clusion, I will write you a letter or opinion. If I
7 need any additional help, I will give you an opportun-
8 ity to criticize my tentative opinion. If I decide
9 in favor of the plaintiff, I will give the defendant
10 an opportunity, if they so desire, to appeal that
11 ruling immediately. So, you won't have to go to the
12 trouble of looking over all of those invoices at this
13 time. If on the other hand I decide in favor of the
14 defendant, they won't have that problem. One person
15 doesn't have to file a brief and then the other answer.
16 Why don't you both file simultaneous briefs. I will
17 give you as much time as you want. Is thirty days
18 all right?

19 MR. SHAINSWIT: Your Honor, I think in view
20 of the fact we have both filed comprehensive briefs
21 and comprehensive reply briefs, it would seem to me
22 to make more sense if Your Honor limits us to a five-
23 page statement. And, in connection with anything we
24 want to say that was covered in a brief, to simply
25 refer the Court to it.

1 THE COURT: That's all right. Then you can
2 do it next week.

3 MR. SHAINSWIT: That's right.

4 MR. HART: I think Mr. Shainswit is right.
5 I don't have to go through a lot. You can just refer
6 to it.

7 THE COURT: You can just say, "My theory
8 is this. The cases which I cited on page 21 and 26 are
9 the cases upon which I rely."

10 MR. SHAINSWIT: May I point out just as an
11 illustration to see if it would help Your Honor; for
12 example, my colleague referred to this Michigan case.
13 Now, in our reply, we dealt with that Michigan case.
14 We pointed out what we considered to be the seven basic
15 features in our case, which makes his Elston-Richards
16 case totally irrelevant. It seems to me to make
17 little difference, I would rather have a one-sentence
18 admonition to the Court in connection with the Elston-
19 Richards case.

20 THE COURT: I agree with you, Mr. Shainswit.

21 MR. HART: Your Honor, may I have that on a
22 different point. This morning we served on Mr.
23 Shainswit a very short memorandum; and the reason for
24 us serving it is set forth in the first paragraph of
25 the memorandum. You don't have it, Your Honor, because

1 I'm about to ask permission to hand it up. In the
2 first paragraph we say that in their reply brief they
3 made reference to some matters, which if they were going
4 to rely on it, should have appeared in their main
5 brief; therefore, since it is a new matter, that should
6 have appeared in their main brief, we thought we would
7 make some brief reference to it if Your Honor will
8 permit.

9 THE COURT: I will be glad to do that.

10 MR. HART: Thank you, Your Honor.

11 MR. SHAINSWIT: If Your Honor please, just
12 to straighten out the record, if I may, because I note
13 from the transcript of the pre-trial, by the way ----

14 THE COURT: Are you going to answer him
15 on this statement whether this should be in the
16 original brief or not? You don't have to do that now.

17 MR. SHAINSWIT: If he wants it, this is
18 not a jury case, Your Honor; I'm not going to try to
19 block anything. I just wanted to call to Your Honor's
20 attention for the record, in case we have proceedings
21 in the Court of Appeals, we have served on Your Honor
22 the Liberty Mutual policy and C & A policy. We have
23 indicated that the Liberty Mutual policy was identi-
24 cal with the policy which immediately preceded it and
25 was identical with the Liberty Mutual policy on a

1 subsequent calendar year. I have all of the policies.
2 I am perfectly willing to file with the Court the
3 other two so long as it's understood.

4 Secondly, we basically have no
5 dispute as to the background facts which provides the
6 core of the issue of interpretation. We have filed
7 with the Court the five depositions that we took of
8 various manufacturers to illustrate the way in which
9 the problem arose and the common defect and how the
10 damage occurred. They sort of provided the factual
11 background for the unified presentation. We will
12 file them so they are part of the file. I don't
13 believe the Court need refer to them because there is
14 no dispute as to the facts, at least it would be under-
15 stood it will be part of the record.

16 THE COURT: They are part of the record.

17 MR. SHAINSWIT: Secondly, my friend served
18 on Your Honor the response to interrogatories that he
19 had served on us. Part of the scheduled package in
20 his response, he inadvertently left out the exhibits.
21 Now the actual package of responses to the interroga-
22 tories on file is part of the record. So again I just
23 want to have it understood.

24 THE COURT: I don't see the relevancy of
25 it.

1 MR. SHAINSWIT: I don't see it either. He
2 served them. I am always concerned when something
3 incomplete is served.

4 THE COURT: I am proceeding on the basis
5 that the parties, with commendable frankness, have
6 admitted the facts. The only interpretation are those
7 I read earlier.

8 MR. SHAINSWIT: The only thing, all due
9 deference, I believe Your Honor needed to interpret
10 the policies and respect the briefs of the parties.
11 I don't see any need for anything else.

12 THE COURT: Is there anything else you want
13 to say, Mr. Hart?

14 MR. HART: Well, to remind Mr. Shainswit,
15 he wanted to say something, but I will say it for him;
16 in our brief, we mentioned ----

17 MR. SHAINSWIT: I will say it.

18 MR. HART: We will have no objection
19 naturally to the amendment on the trail of the
20 complaint of the plaintiff to show how much they want.
21 He has come up with a stipulation; we are glad to sign
22 it. As I pointed out to Mr. Shainswit, I don't think
23 it can be misunderstood; of course, we agreed to his
24 increasing the amount to any amount he wants to state,
25 but there is no implication in our entering into that

1 stipulation that all of the facts have already been
2 submitted to us.

3 MR. SHAINSWIT: Your Honor, I will continue
4 to give him appropriate discovery in the same fashion
5 we have been cooperating with each other up to now.

6 THE COURT: I want to say I am grateful to
7 both of you for the presentation and for the stream-
8 lining of this case. When I first got the case, these
9 young men came and told me how long it was going to
10 take to get all of the facts in. I didn't think so.
11 I didn't know very much about the case. As I took a
12 look at it, I didn't see on the issue of liability
13 there was going to be very much dispute. I concluded
14 it was a matter of interpretation of the policy. I am
15 glad to say I was right on that. You just have to hope
16 I'm going to be right on the conclusion.

17 MR. SHAINSWIT: Your Honor, will you make
18 that Friday?

19 MR. HART: Of this week?

20 THE COURT: Today is Wednesday. I'm not
21 going to be able to look at it over the weekend. I'm
22 working on instructions. How about next Wednesday?

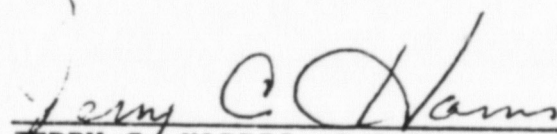
23 MR. HART: Thank you, Your Honor.

24 MR. SHAINSWIT: Your Honor, thank you for
25 your patience. At least we will have the decision of
Solomon.

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF OREGON
4

5 I, the undersigned, Jerry C. Harris, an
6 Official Reporter of the United States District Court
7 for the District of Oregon, do hereby certify that I
8 reported in Stenotypy the proceedings occurring in the
9 transcript appended hereto; that I thereafter caused
10 my stenotype notes, so taken, to be reduced to type-
11 writing under my direction; and that the foregoing and
12 hereto attached pages of typewritten matter, numbered
13 1 to 66, both inclusive, constitutes a full, true and
14 accurate record of said proceedings so reported by me
15 in Stenotypy, as aforesaid

16 Dated at Portland, Oregon, on this the 19th
17 day of November, 1975.
18
19
20

21 
22 JERRY C. HARRIS, C.S.R.
23 Official Court Reporter
24
25

Opinion of Solomon, D.J.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

[SAME TITLE]

Champion International Corporation (Champion) filed this action to recover \$1,000,000 from Continental Casualty Company (Continental), one of Champion's insurers. This Court has jurisdiction under 28 U.S.C. §1332.

Champion sells construction materials, among other things. In 1969 and 1970, Champion bought a large number of vinyl covered plywood panels from Continental Vinyl Products Corporation (Continental Vinyl). Champion then sold the panels to many manufacturers, who installed them in the interiors of houseboats, house trailers, motor homes and campers.¹ Many of the panels were defective; after they were installed, the vinyl covering peeled off and exposed the underlying raw plywood.

More than 1400 vehicles manufactured by at least 26 different firms were damaged by the defective panels. Champion assumed liability for the damages; it paid more than \$1.6 million to settle the claims of the manufacturers and the purchasers of the damaged vehicles. The damage sustained by a single vehicle was always less than \$5,000.

During 1969 and 1970, when it was discovered that many of the panels were defective, Champion was insured under

1. The panels were usually sold in small lots, as required by the production schedules of the purchasing manufacturers. For example, Cobra Industries, Inc., received 105 separate shipments of the panels from January, 1969, to March, 1970; Cobra manufactured 224 of the damaged trailers from April 9, 1969, to November 19, 1969. Nautaline, Inc., manufactured 260 of the damaged houseboats from April 3, 1969, to June 26, 1970.

Opinion of Solomon, D.J.

two policies: a comprehensive general liability policy issued by Liberty Mutual Insurance Company (Liberty), and an umbrella excess third party liability policy issued by the defendant, Continental.

The Liberty policy provided Champion with the following coverage:

"The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of . . . property damage to which this policy applies, caused by an occurrence . . . but the company shall not be obligated to pay any claim or judgment . . . after the applicable limit of the company's liability has been exhausted by payments of judgments or settlements."

Liberty's coverage was limited to \$100,000 for each "occurrence", and \$200,000 aggregate, with a \$5,000 deductible per occurrence.²

The Liberty policy defined "occurrence", "damages", and "property damage" as follows:

"'occurrence' means . . . an accident, including injurious exposure to conditions, which results, during the policy period, in bodily injury or property damage neither expected nor intended from the standpoint of the insured . . ."

2. Endorsement No. 8 of the Liberty policy provided for a designation as to whether the deductible amount was to apply per claim or per occurrence. Per occurrence was chosen. Endorsement No. 8 provided:

"SCHEDULE

<i>Coverage</i>	<i>Amount and Basis of Deductible</i>	
Bodily Injury Liability	\$	per claim
	\$	per occurrence
Property Damage Liability	\$	per claim
	\$5,000	per occurrence"

Opinion of Solomon, D.J.

"for the purpose of determining the limit of the company's liability . . . all . . . property damage arising out of continuous or repeated exposure to substantially the same general conditions . . . shall be considered as arising out of one occurrence."

" 'damages' includes . . . damages for loss of use of property resulting from property damage[.] "

" 'property damage' means injury to or destruction of tangible property."

The Liberty policy contained a provision on occurrences which result in damage over a long period:

"If the same occurrence gives rise to . . . property damage which occurs partly before and partly within the policy period, the each occurrence limit and the applicable aggregate limit or limits of this policy shall be reduced by the amount of each payment made by the company with respect to such occurrence under a previous policy or policies of which this policy is a replacement."

The Liberty policy also contained a provision relating to a single occurrence which results in property damage sustained by one or more persons.

"Coverage B—The total liability of the company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the declarations as applicable to 'each occurrence'.

The Continental policy provided coverage in excess of Liberty's basic policy. The Continental policy indemnified

Opinion of Solomon, D.J.

Champion for all money which Champion was obligated to pay

“for damages, direct or consequential, and expenses, all as defined by the term ‘ultimate net loss’ on account of . . . Property Damage . . . caused by or arising out of each occurrence.”

The Continental policy defined “ultimate net loss” as the

“ . . . total sum which the Insured or any company as his insurer becomes obligated to pay by reason of . . . Property Damage . . . , either through adjudication or compromise, and all sums paid for expense[s]”

The limit of Continental’s liability was \$1,000,000 for any occurrence in excess of the amount recoverable from Liberty. Continental’s liability was also limited to \$1,000,000 for multiple occurrences.

“Occurrence” was defined as

“ . . . an event or continuous or repeated exposure to conditions, which unexpectedly causes . . . Property Damage . . . during the policy period.”

Finally, the Continental policy contained the following provision:

“ . . . [I]n the event of loss for which [Champion] has coverage under [underlying insurance], the excess of which would be recoverable hereunder, except for terms and conditions of this policy which are not consistent with the underlying, then, notwithstanding anything contained herein to the contrary, this policy shall be amended to follow the

Opinion of Solomon, D.J.

terms and conditions of the applicable underlying insurances in respect of such loss."

Continental admits that the damage to the vehicles which resulted from the defective panels constituted property damage covered by the Liberty and Continental policies.³

Champion argues that the damage to all of the vehicles arose from a single occurrence. Under this interpretation, Champion may recover all of its damage, less the \$5,000 deductible and less the \$100,000 paid by Liberty, but not exceeding the \$1,000,000 limit of liability.

Continental argues that the damage to each vehicle was a separate occurrence within the meaning of the policies. Because no vehicle sustained damage in excess of \$5,000, the amount deductible for each occurrence, Continental argues that Champion is not entitled to anything under the Continental policy.

Each party contends that the language of the policies is clear and unequivocal and supports its contentions. Each party concedes that if a policy is ambiguous, the language is to be construed against the insurance company. The New York rule goes further and provides that if a policy can be reasonably construed in favor of the position asserted by the insured, he is entitled to recover. *See Data-*

3. I believe that this is a fair conclusion from Continental's admissions that

"(1) the diminution in value of vehicles resulting from the delaminations of the panels constituted property damage within the 'products hazard' as those terms are defined in the Liberty Mutual policy and in the Umbrella Excess policy, and

(2) the liability of Champion for such property damage is a type of liability covered by the Liberty Mutual policy and the Umbrella Excess policy under the 'Products Hazard', subject only to the application of the limits of liability of the policies and the provisions of the policies with respect to other insurance."

Opinion of Solomon, D.J.

lab, Inc. v. St. Paul Fire & Marine Insurance Co., 347 F. Supp. 36, 38 (S.D.N.Y. 1972); *Sincoff v. Liberty Mutual Fire Ins. Co.*, 11 N.Y.2d 386, 230 N.Y.S.2d 13, 183 N.E.2d 899 (1962). This rule is particularly applicable when the policy is denominated a "comprehensive general liability policy". *National Screen Serv. Corp. v. United States Fidelity and Guaranty Co.*, 364 F.2d 275, 279-280 (2d Cir. 1968). Here the Liberty policy was so denominated. The Continental policy is an umbrella excess third party liability policy, which appears to afford even broader coverage.

I believe that this is a fair rule of construction. The contested provisions of both the Liberty and Continental policies are standard ones. They are in similar policies issued by many companies.

Insurance companies could prepare policies in clear, simple and precise language which would inform insureds of the limits of their coverage. Insurance companies could avoid the risk of ambiguity if they use short and precise words and short and simple sentences to express their intent clearly. In spite of continued admonitions of the courts to get rid of such language, insurance companies continue to issue such policies using insurance jargon and verbose and meaningless generalities, all of which result in ambiguities.

I do not know whether the Continental policy was ever intended to cover this type of loss. But Continental's admissions that this is the type of loss which the policy was designed to cover require me to decide this case solely on whether there was one occurrence which proximately resulted in damage to many vehicles, or whether the damage suffered by each of those vehicles was a separate occurrence.

On this issue, I find in favor of the plaintiff because I find that the contested language is ambiguous. The interpretation urged by the plaintiff may not be the only reason-

JA165

Opinion of Solomon, D.J.

able interpretation, but it is a reasonable one. That is all plaintiff is required to prove.

In making this determination, I have given no weight to the fact that Liberty, under its policy, paid Champion.

This opinion shall constitute findings of fact and conclusions of law in accordance with Fed. R. Civ. P. 52(a).

The parties may submit additional findings.

Plaintiff shall submit an appropriate judgment in accordance with this opinion.

Dated this 1st day of May, 1975.

/s/ GUS J. SOLOMON
United States District Judge

Memorandum of Solomon, D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

In my opinion dated May 1, 1975, I decided all issues relating to liability. I do not propose to consider these issues again.

I do not believe the issue of damages should require a great deal of preparation, and I do not believe that the trial on that issue should require more than a day.

Unless the parties on or prior to July 1, 1975, have stipulated on the amounts paid by Champion International in settlement of the claims which they assert are covered by Continental Casualty's policy, I shall set the issue of damages for trial no later than Thursday, August 21, 1975, at 9:30 A.M. at the United States Court House in New York City. In addition to the amounts paid by Champion International, I shall hear evidence on the reasonableness of such payments and the good faith of Champion International in paying or causing these payments to be made.

It may be helpful if plaintiff will promptly serve on defendant carefully prepared requests for admissions.

I do not propose to enter an order from which an interlocutory appeal may be taken.

Dated this 12th day of June, 1975.

/s/ GUS J. SOLOMON
United States District Judge

Order of Solomon, D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Under Rule 52 Federal Rules of Civil Procedure, a party need not submit findings or object to findings that are entered or move to amend them in order to question the sufficiency of the evidence to support such findings or to question the validity of the conclusions. Nevertheless, in my opinion dated May 1st, 1975, I said, "The parties may submit additional findings." I made this statement to invite the parties to point out errors or omissions in my written opinion.

Both the plaintiff and the defendant accepted my invitation and submitted proposed findings. I have read each proposal in the light of my opinion, and I find that each one is either unnecessary or incorrect. I believe that my opinion contains an adequate statement of the relevant facts and the reasons for my conclusions.

My opinion is limited to the issue of liability. When I have decided the damages, I shall make additional findings, and based on the findings on both the issues of liability and damages, I will enter a judgment.

Dated this 18th day of June, 1975.

/s/ GUS J. SOLOMON
United States District Judge

JA168

Notice to Take Deposition Upon Oral Examination

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, defendant will take the deposition upon oral questions of plaintiff Champion International Corporation by its Associate Counsel and Assistant Secretary, Stephen B. Brown, Esq., whose address is 777 Third Avenue, New York, New York, at the office of Hart & Hume, 10 East 40th Street, New York, New York, on the 24th day of June at 10:00 A. M.

Yours etc.

HART & HUME
Attorneys for Defendant

By: /s/ CECIL HOLLAND, JR.

A Member of the Firm
Office & P. O. Address
10 East 40th Street
New York, New York 10016
Telephone: (212) 686-0920

To:

KRONISH, LIEB, SHAINSWIT, WEINER
& HELLMAN, ESQS.
Attorneys for Plaintiff
1345 Avenue of Americas
New York, New York 10019

JA169

**Plaintiff's Motion to Vacate Defendant's Notice
to Take Deposition**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

S I R S :

PLEASE TAKE NOTICE that pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, plaintiff Champion International Corporation moves the Court for an order vacating the notice of deposition by defendant's attorneys on June 17, 1975, and directing that such deposition not be had, on the grounds, as more particularly appear from the affidavit of Seymour Shainswit, Esq. attached hereto, that such deposition has not been authorized by the Court, flouts outstanding directives of the Court, and that defendant has acted in manifest bad faith and in such manner as unreasonably to annoy, embarrass and oppress the plaintiff, and to prejudice and interfere with the implementation of the directives of the Trial Court, which the Honorable Gus

JA170

*Plaintiff's Motion to Vacate Defendant's Notice
to Take Deposition*

J. Solomon has set forth in the Court's Memorandum dated
June 12, 1975.

Dated: New York, New York
June 17, 1975

Yours etc.

KRONISH, LIEB, SHAINSWIT,
WEINER & HELLMAN
Attorneys for Plaintiff

By: /s/ SEYMOUR SHAINSWIT

A Member of the Firm
Office & Postoffice Address
1345 Avenue of the Americas
New York, New York 10019
Tel.: (212) 765-6000

To: Hart & Hume, Esqs.
Attorneys for Defendant
10 East 40th Street
New York, New York 10016

Affidavit of Seymour Shainswit in Support of Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

State of New York)
County of New York) ss.:

SEYMOUR SHAINSWIT, being duly sworn, deposes and says:

I am a member of the law firm of Kronish, Lieb, Shainswit, Weiner & Hellman, attorneys for the plaintiff herein, and I am fully familiar with all of the facts set forth herein. I have personally been in charge of the prosecution of this lawsuit from its inception on November 23, 1970.

I respectfully submit this affidavit in support of the sub-joined notice of motion for judicial relief vacating a wholly improper notice to take deposition served by defendant's counsel. A copy of this notice to take deposition is annexed hereto, marked "Exhibit A". The Court will observe that the notice of deposition is undated. The fact is that it was just served upon our office in the afternoon of June 17, 1975. The notice proposes to first initiate the deposition of plaintiff, upon oral questions, on June 24, 1975.

The Court is already personally familiar with everything that has transpired in this case since the filing of the Court's opinion on May 1, 1975. The Court has already witnessed a persistent effort by defendant to seek to re-try issues relating to liability. Upon the heels of this Court's Memorandum of June 12, 1975, in which the Court emphasized that one trial is enough on the issue of liability, and

Affidavit of Seymour Shainswit

the Court having charted the appropriate procedures to effect a disposition, and promptly, of the solitary issue of damages, along the lines blueprinted in the Memorandum, defendant has now adopted a new gambit to undercut the Court's directives and to bedevil the plaintiff with newly conceived oppressive tactics.

This case is now nearly five years old. In the entire history of this litigation, defendant never even initiated a notice of deposition. It has always adopted the position that once the issue of liability was resolved, there would be little, if anything, of a factual nature that would have to be explored in further proceedings. Indeed, at the trial on the issue of liability it was admitted by defendant that the amount of damages exceeded the amount of the Continental Casualty Company's policy. As the Court has recognized in its Memorandum of June 12, 1975, any trial on the issue of damages should not require more than one day.

At this late stage, I respectfully submit that there is absolutely no warrant for defendant's incredible maneuver to first seek to initiate a blanket inquisition of the plaintiff. I do not believe that it is necessary, on this motion, to rehearse the obvious: Continental Casualty Company has resorted to a tactic which merits firm judicial rebuke.

I respectfully pray that this Court enter an order vacating the defendant's tainted notice to take deposition. In view of the number of years which have already elapsed, during which time Continental Casualty Company could have pursued discovery, it is much too late for Continental Casualty Company to proceed as if the case had just been commenced.

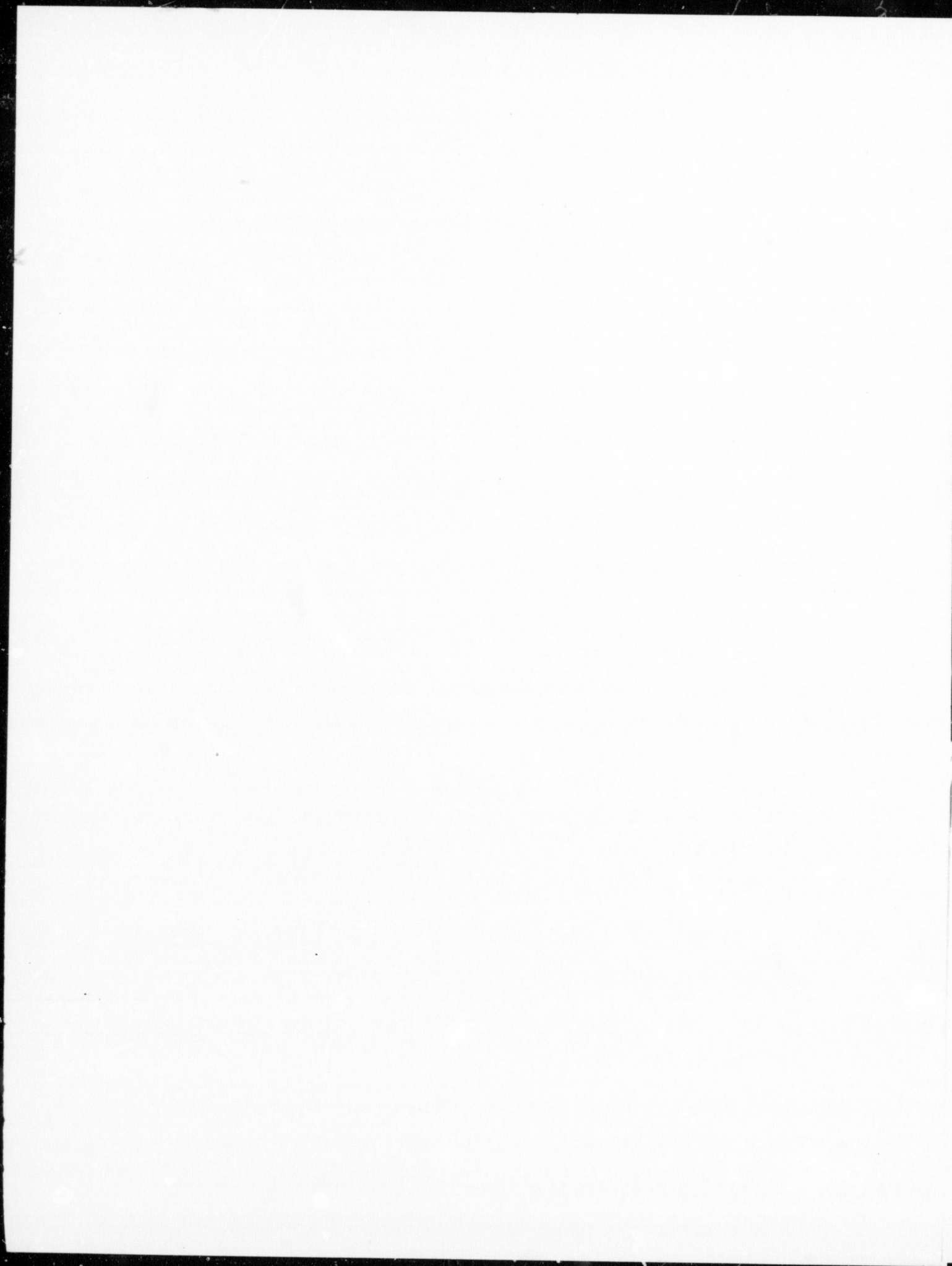
/s/ SEYMOUR SHAINSWIT

(Sworn to June 17, 1975.)

JA173-JA174

**Exhibit A Annexed to Affidavit of Seymour Shainswit
Notice to Take Deposition Upon Oral Examination**

(As shown herein at page JA168)



JA175

Affidavit of Jack Hart in Opposition to Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

State of New York)
County of New York) ss.:

JACK HART, being duly sworn, says:

I am a member of the firm of Hart & Hume, attorneys for defendant, and have been in charge of this case from the beginning. I make this affidavit in opposition to plaintiff's motion to vacate defendant's notice to take deposition of plaintiff by its Associate Counsel and Assistant Secretary, Stephen B. Brown, Esq. on June 24, 1975.

Mr. Shainswit's affidavit in support of the motion is an outrage—false, misleading and impertinent. We have in the past sought to overlook the invective, often of an *ad hominem* character, in plaintiff's previous submissions and to confine ourselves to the issues presented. It is obvious, now, that the major mistake defendant made in this action was to expect that plaintiff's counsel would act in lawyer-like manner.

The defendant is *not* requesting any adjournment of the date to be set for trial by the Court. (The only request we have with respect to the trial date is that it not be set during the week of August 11, 1975, the reason being that for over twenty years I have not missed an American Bar Association Convention and I am planning to attend the one in Montreal during the week of August 11, 1975).

Affidavit of Jack Hart in Opposition to Motion

There is absolutely no way in which the delay in reaching a disposition of this action can be attributed to the defendant. We stated from the beginning to the plaintiff's attorneys and to this Court, whenever we appeared before it, that we expected that when the plaintiff had collected the facts and made them available to us, there would be little, if anything, in the way of factual dispute to submit to the Court.

Even before this action was started, in April, 1970, Continental requested Liberty Mutual to agree to binding arbitration to determine the respective coverages of their policies so that responsibility, if any, could be determined. Since, for all practical purposes, there would be no appeal from an arbitration decision, this case would have been disposed of over five years ago. This offer was rejected by Liberty Mutual by letter dated May 6, 1970 and the reason plainly was that since Champion, in relation to Liberty Mutual, was essentially a self-insurer, it did not want Liberty Mutual as a party in any litigation where, as an insurance company, Liberty Mutual, would for itself have to urge the construction of the policy which Champion has submitted. Of course, for the same reason, Champion did not join Liberty Mutual as a party in this case.

The chronology of this action is as follows:

The action was instituted in November, 1970 in the Supreme Court of the State of New York demanding recovery of \$384,304.95. Continental removed it to the Federal Court on the ground of diversity. Our answer was served on December 28, 1970.

On February 1, 1971, Continental served interrogatories upon Champion. On February 24, 1971, Champion served a notice to take the deposition of Jacque Sammet, the then president of Continental whose office was in Chicago, Illinois and who had no personal knowledge of this case. We offered to submit for examination any employees of Con-

Affidavit of Jack Hart in Opposition to Motion

tinental having knowledge but this was rejected by Champion and on March 3, 1971 we served a notice of motion for a protective order that others than Mr. Sammet, with direct knowledge of the matter, be deposed. Judge Metzner granted the protective order under date of May 5, 1971.

On April 16, 1971, Champion served a request for production of documents by Continental relating to the history and form of the umbrella excess policy.

On May 26, 1971, Champion served its responses to our interrogatories, objecting to most.

On June 16, 1971, Continental served a request for production of documents.

On July 23, 1971, Continental served its responses to Champion's request for production of documents, setting forth copies of some documents and objecting to others.

On September 28, 1971, Champion served its responses to Continental's request for production of documents, objecting to most.

On October 12, 1971, and November 23, 1971, Continental moved to compel answers to its interrogatories. Also on October 12, 1971, Continental moved for an order overruling plaintiff's objections to our request for production of documents.

On June 14, 1972, pursuant to the suggestion of Champion, a stipulation was made between the parties that the then pending four motions, which had from time to time been adjourned, be withdrawn so that Champion could continue with its compilation of data and the parties could seek to engage in voluntary discovery.

Following the stipulation of June 14, 1972, various meetings were held between counsel seeking, among other things, to agree on a format in which the data being compiled by Champion would be submitted. The data would include summaries of information in Liberty Mutual's claim files, of information collected from manufacturers of ve-

Affidavit of Jack Hart in Opposition to Motion

hicles, and of information contained in Champion's files. The designation of "data compilation sheets" was given to these proposed summaries by Champion's attorneys. We were informed that because Liberty Mutual's files were in considerable disarray, they would have to be "restructured" in order to prepare the summaries.

On August 21, 1972, Lawrence D. Bernfeld, Esq., an associate in the office of Champion's attorneys, notified Cecil Holland of Hart & Hume, Continental's attorneys, by telephone, that they were about 35% through "restructuring" Liberty Mutual's files. (Liberty Mutual, we are informed, handled the investigation, settlement and payment of claims due to alleged delamination of plywood panels).

On March 3, 1973, Mr. Bernfeld notified Mr. Holland, by telephone, that the restructuring of Liberty Mutual's files was almost complete. With respect to the records of manufacturers who purchased panels from Champion, Mr. Bernfeld suggested that we proceed initially by depositions on written questions, reserving the right to have oral depositions or other discovery, if deemed necessary. We agreed to this procedure and subsequently the testimony of five manufacturers was obtained in this manner.

On September 25, 1973, Mr. Bernfeld advised Mr. Holland, by telephone, that Mr. Shainswit, the attorney in charge for Champion, was of the view that the "data compilation sheets" were a lawyer's work product and that they would be made available to us only upon our prior agreement that such sheets would be admissible upon a trial, with only the question of their accuracy being reserved. Thus at this point, almost three years after commencement of the action, plaintiff was refusing to provide defendant with a statement of its claim.

On October 29, 1973, Mr. Bernfeld repeated to Mr. Holland by telephone Mr. Shainswit's position regarding "data compilation sheets" as stated in Mr. Bernfeld's telephone call of September 25, 1973.

Affidavit of Jack Hart in Opposition to Motion

On a date which I cannot easily locate in our files, I attended a meeting with Mr. Shainswit and others in which I stated that I did not see how the "data compilation sheets", which purportedly summarized the damage claims made and paid, could be excluded on a trial since the underlying data was available. I stated that if the data sheets contained the information Mr. Shainswit said was on them, he could certainly expect that I would not raise any question as to their admissibility. However, I stated, that until we had an opportunity to examine them and ask such questions about them as seemed appropriate, we could not give a prior blanket stipulation that we would have no objections.

On May 17, 1974, there was a meeting of counsel for both sides to see if we could agree on the presentation to be made to Magistrate Jacobs before whom we were to appear on May 30, 1974. At our meeting on May 17, 1974, and at our appearance before Magistrate Jacobs, Mr. Shainswit said that he was thinking of a "motion for summary judgment" on the issue of liability. On both occasions, I stated that while it would be desirable, if possible, to obtain a determination on the issue of liability alone, I believed that, in this case, it could not be done without submitting the factual data to the Court. Mr. Shainswit stated before Magistrate Jacobs that he planned to make a "motion for summary judgment" on the issue of liability and expected to serve his papers in about a month, which would bring us to approximately July 11, 1974.

On June 13, 1974 we were advised by Mr. Shainswit's office that we were to appear before Judge Pollack on June 14, 1974, for a "settlement or disposition" conference. This date was adjourned to July 2, 1974, because I was out of town.

On June 20, 1974, Mr. Holland wrote to Abner P. Slatt, Esq., of Champion's law firm asking for factual data and material (including copies of the "data compilation sheets")

Affidavit of Jack Hart in Opposition to Motion

which we had still not received) which we felt would be needed for a determination of the liability issue.

On June 25, 1974, Mr. Slatt wrote to Mr. Holland asserting that the data and material requested in Mr. Holland's letter of June 20, 1974, was not necessary on the issue of liability and suggesting that both sides "postpone further discovery until the Court has ruled upon the motion construing the language of the policies."

On June 28, 1974, Mr. Holland responded to Mr. Slatt repeating our view that the liability issue could not be decided without the facts requested in his June 20th letter and pointing out that we had been trying to obtain the facts for years.

On July 2, 1974, we appeared before Judge Pollack. Judge Pollack rejected Mr. Shainswit's suggestion that the liability issue could be decided without the facts. He directed that the parties prepare "agreed and disputed findings of fact" as outlined in his article in the New York Law Journal of March 28, 1974. He said that the purchasers of the panels by Champion did not seem relevant but directed there be a full disclosure of Champion's sales records, the claim files, the Liberty Mutual policies and the retrospective rating plan (self-insurance) between Champion and Liberty Mutual. Judge Pollack scheduled another conference for September 27, 1974 at which time the parties were to have their agreed and disputed findings of fact completed.

On July 10, 1974, Mr. Holland spoke by telephone with Messrs. Shainswit and Slatt and was informed that the claims files were ready for review by Mr. Holland. Mr. Holland arranged to start such review at Mr. Shainswit's office on July 16, 1974.

Copies of the "data compilation sheets" with respect to Liberty Mutual's files were finally received on July 15, 1974.

Affidavit of Jack Hart in Opposition to Motion

On July 17, 1974, Mr. Holland met with Messrs. Shainswit and Slatt at their office. Mr. Shainswit stated that Champion was gathering additional information from the various manufacturers, utilizing Champion's branch managers, that when the information they were gathering had been collected, he would prepare schedules and show us the information on which the schedules were based, after which, he said, we could "chart our own course". As to what information was being collected, Mr. Shainswit mentioned only one item, namely, the production dates of the damaged units.

On July 17, 18, 22, 23, 25, 26; August 1, 2, 8, 9, 22; and September 6, and 9, 1974, Mr. Holland spent a total of some forty-four hours examining Liberty Mutual claim files and some Champion invoices at Mr. Shainswit's office.

On September 6, 1974, Mr. Holland, while at Mr. Shainswit's office, suggested to Messrs. Shainswit and Slatt that we try to agree on the forms of schedules to be submitted to the Court. This suggestion was rejected.

On September 9, 1974, Champion's attorneys sent a letter to Judge Pollack, in which, at their request, we joined, requesting an adjournment of the conference scheduled for September 27, 1974, to on or after October 25, 1974. In part, this letter said:

"Pursuant to Your Honor's directions we are collecting and producing records and data relating to the sales of these panels to customers; the use of these panels by U.S. Plywood's customers to produce completed products; property damage claims arising from the delamination of these panels in completed products; and the investigation, settlement and payment of these claims by Liberty Mutual Insurance Company on behalf of U.S. Plywood. This material is being collected and reviewed in order to provide a basis for agreed and disputed

Affidavit of Jack Hart in Opposition to Motion

findings of fact which the parties are now scheduled to complete and submit to Your Honor at a conference on September 27, 1974. We have been informed by several of the parties furnishing data to us that their review and production of their records will not be completed for at least three weeks."

On September 10, 1974, we received a telephone call from Mr. Shainswit's office advising that the conference before Judge Pollack had been adjourned to October 29, 1974.

On September 16, 1974, we were advised that the case had been re-assigned to Judge Solomon and a conference scheduled for September 20, 1974.

At the conference on September 20, 1974, Judge Solomon (a) denied the request of both parties for an adjournment to October 29, 1974, although plaintiff stated it still was obtaining documentation in support of its claim; (b) ruled that the issue of liability would be decided separately from the damages; and (c) directed the parties simultaneously to submit briefs on the issue of liability on October 3, 1974.

In the brief submitted by Continental on October 3, 1974, we said at pp. 8-9:

*"Continental's Position**(a) Regarding the Facts*

Continental's position from the beginning has been that when Champion has completed collecting and organizing the controlling facts, there will most likely be little, if any, dispute of fact to submit to the Court for adjudication. When Champion instituted this action in November, 1970, it was still engaged in investigating and adjusting claims arising from the alleged delaminations. Accordingly,

Affidavit of Jack Hart in Opposition to Motion

the complaint demands recovery of \$384,304.95 plus additional sums which Champion might become obligated to pay. There will, of course, be no objection on the part of Continental to Champion's amending the amount of its claim at the trial. Early in this litigation when certain motions by Continental to compel disclosure were pending and certain other motions by Champion were also pending, both sides agreed to withdraw their motions upon the stipulation that Champion would furnish the facts voluntarily upon their being collected. Many of the facts have been furnished to us."

After receiving our brief, Champion's attorneys asked us to consent to an amendment of the complaint to allege damages in the amount of \$1,612,508.39. We stated to them, as we then did in open Court before Judge Solomon, that we would do so upon the clear understanding that there would be no waiver of our right to receive the details of the claim and to complete our review of supporting documents.

On October 16, 1974, we appeared for argument before Judge Solomon. (The amendment to the complaint, increasing the amount of alleged damages, was "so ordered" on that day by Judge Solomon on the basis of a stipulation of consent to such amendment.)

On October 23, 1974, post-argument briefs were submitted to Judge Solomon.

On May 1, 1975, Judge Solomon rendered his opinion on the issue of liability. Although Judge Solomon's May 1, 1975 opinion stated that "the parties may submit additional findings" and such proposed findings were submitted by each side, Judge Solomon declined to make any additional findings. Judge Solomon, also, apparently denied our request, made in our letter of June 2, 1975, that the parties

Affidavit of Jack Hart in Opposition to Motion

be directed "to proceed with their efforts to prepare a statement of 'agreed and disputed findings of fact' which last September they were planning to do pursuant to Judge Pollack's direction."

By Memorandum dated June 12, 1975, Judge Solomon stated that he would set the issue of damages for trial not later than August 21, 1975.

As above stated, Continental does not request an adjournment of the trial. It is, however, utterly beyond us why plaintiff should oppose our deposing Champion to obtain the facts which will have to be introduced on the trial. As above set forth, we did not press our interrogatories or notice oral depositions because we were cooperating in permitting the plaintiff to collect its facts so that wherever possible we could stipulate facts.

With respect to the instant motion, how can the plaintiff possibly be prejudiced by setting on the record, under oath, the facts on which it will rely on the trial? If this is not done before trial, will it not have to be done at the trial, taking up time and defeating the very purpose of the discovery rules?

With respect to factual data in possession of the plaintiff which it may contend is irrelevant and therefore not admissible, what possible prejudice can result to plaintiff? If on the trial, the Court sustains objections on the ground of irrelevancy or otherwise, the evidence will simply not be admitted and no harm will have been done. However, admissibility will be a question for the Court, not for the attorneys for the litigants. Where possible evidence is available, it seems obvious that the interest of the Court and all concerned will best be served by informing the defendant of its existence and content before trial. If the possible evidence is not available, then the plaintiff will not be able to produce it upon deposition and it will be fore the Court,

JA184a

Affidavit of Jack Hart in Opposition to Motion

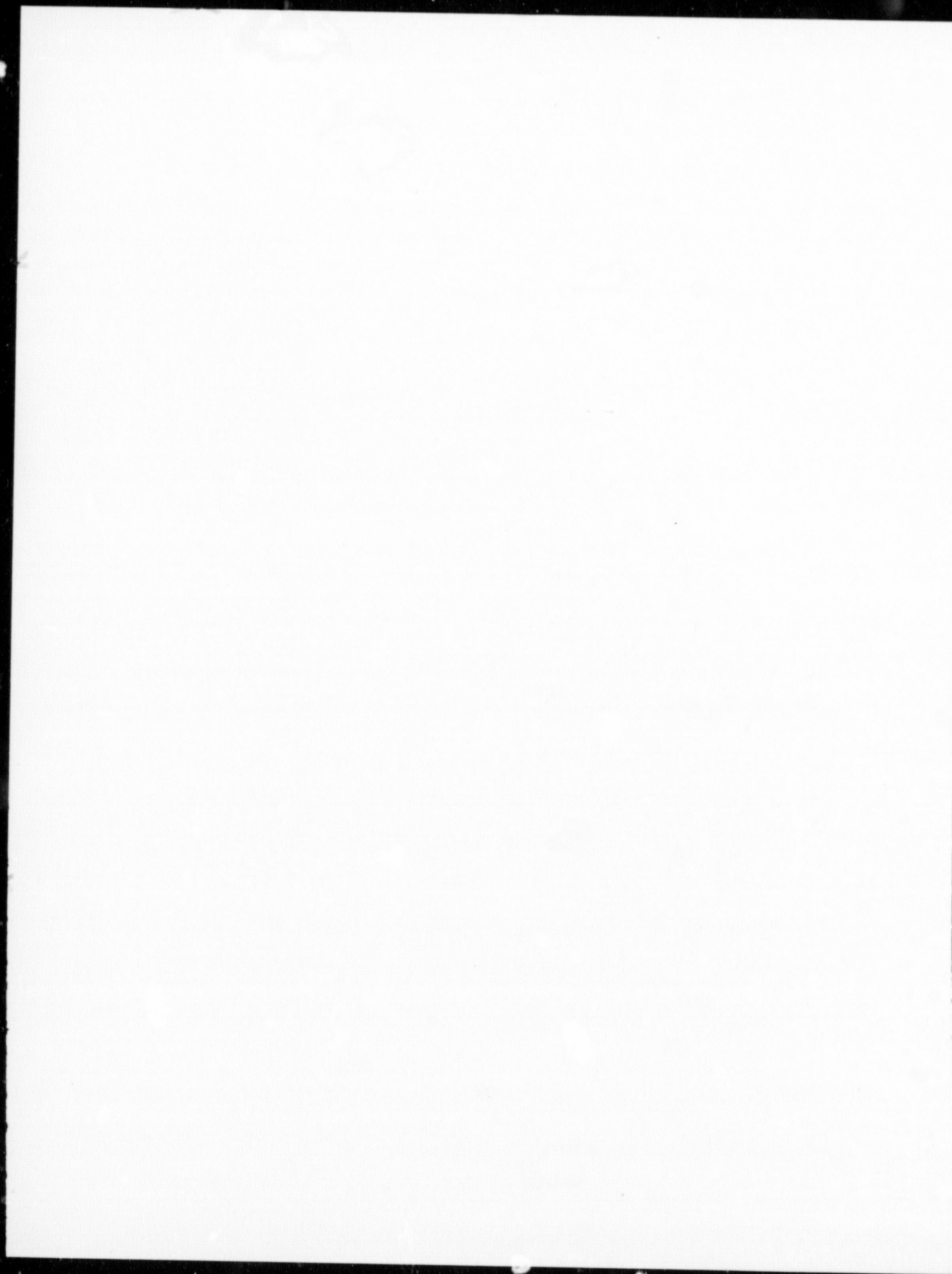
not the attorneys, to decide whether or not there are fatal omissions to make a case.

We received today in the mail "plaintiff's motion to vacate defendant's notice to take deposition". We are air-mailing this affidavit to the Court on the same day.

WHEREFORE, it is respectfully submitted that plaintiff's motion to vacate defendant's notice to take the deposition of plaintiff's officer on June 24, 1975, should be denied.

/s/ JACK HART

(Sworn to June 19, 1975.)



JA185

**15 Checks Set Forth in Exhibit A to Plaintiff's
Request for Admission of Facts**

(Pages JA186 to JA193)

JA 186



U.S. Plywood

A Division of U.S. Plywood-Champion Papers Inc.
777 Third Avenue, New York, N.Y. 10017

1-23
210

6-14109

5/12/70	Amount \$ ***225,000.00***
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Pay to the order of:

Liberty Mutual
10 Rockefeller Plaza
New York, New York 10020

MORGAN GUARANTY TRUST CO. OF NEW YORK
299 PARK AVENUE, NEW YORK, N.Y. 10022

⑆0210⑆0023⑆ 228 07 129⑈

⑈0022500000⑈



U.S. Plywood

A Division of U.S. Plywood-Champion Papers Inc.
777 Third Avenue, New York, N.Y. 10017

1-23
210

6-14361

7/9/70	Amount \$ ***100,000.00***
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Pay to the order of:

Liberty Mutual Insurance Co.
10 Rockefeller Plaza
New York, New York 10020

MORGAN GUARANTY TRUST CO. OF NEW YORK
299 PARK AVENUE, NEW YORK, N.Y. 10022

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JA 187



U.S. Plywood

A Division of U.S. Plywood-Champion Papers Inc.
777 Third Avenue, New York, N.Y. 10017

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6-14510

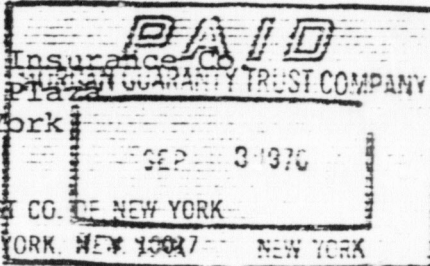
8/27/70

Amount

\$ ***100,000.00***

Pay to the order of:

Liberty Mutual Insurance Co.
10 Rockefeller Plaza
New York, New York



MORGAN GUARANTY TRUST CO. OF NEW YORK
299 PARK AVENUE, NEW YORK, N.Y. 10017

Robert C. Brown
Arthur J. Brown

⑆0210⑆0023⑆ 228 07 129⑈

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U.S. Plywood

A Division of U.S. Plywood-Champion Papers Inc.
777 Third Avenue, New York, N.Y. 10017

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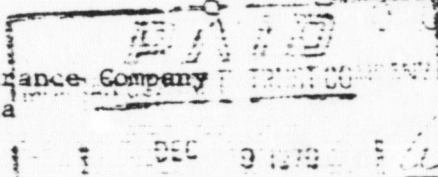
12/1/70

Amount

\$ ***100,000.00***

Pay to the order of:

Liberty Mutual Insurance Company
10 Rockefeller Plaza
New York, N.Y.



MORGAN GUARANTY TRUST CO. OF NEW YORK
299 PARK AVENUE, NEW YORK, N.Y. 10017

Arthur J. Brown
Robert C. Brown

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JA 188



U.S. Plywood

A Division of U.S. Plywood-Champion Papers Inc.
777 Third Avenue, New York, N.Y. 10017

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6-15087

1/28/71

Amount

\$ ***100,000.00***

Pay to the order of

Liberty Mutual Insurance Co.
10 Rockefeller Plaza
New York, N. Y.

MORGAN GUARANTY TRUST CO. OF NEW YORK
299 PARK AVENUE, NEW YORK, N. Y. 10017

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U.S. Plywood

A Division of U.S. Plywood-Champion Papers Inc.
777 Third Avenue, New York, N.Y. 10017

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Amount

\$ ***100,000.00***

Pay to the order of

Liberty Mutual Insurance Co.
10 Rockefeller Plaza
New York, N. Y.

MORGAN GUARANTY TRUST CO. OF NEW YORK
299 PARK AVENUE, NEW YORK, N. Y. 10017

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JA 189

S. PLYWOOD-CHAMPION PAPERS INC.
77 THIRD AVE., NEW YORK, N.Y. 10017

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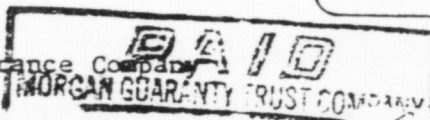
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Liberty Mutual Insurance Company



ORGAN GUARANTY TRUST CO. NEW YORK
99 PARK AVENUE, NEW YORK CITY, N. Y. 10017

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S. PLYWOOD-CHAMPION PAPERS INC.
77 THIRD AVE., NEW YORK, N.Y. 10017

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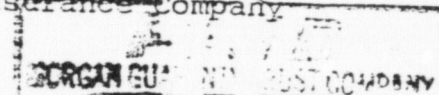
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Liberty Mutual Insurance Company



ORGAN GUARANTY TRUST CO. NEW YORK
99 PARK AVENUE, NEW YORK CITY, N. Y. 10017

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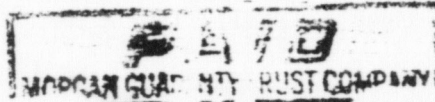
U.S. PLYWOOD-CHAMPION PAPER INC.
777 THIRD AVE., NEW YORK, N.Y. 10017

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Nº 1022

PAY
TO THE
ORDER OF

Liberty Mutual Insurance Company



MORGAN GUARANTY TRUST CO. NEW YORK
299 PARK AVENUE, NEW YORK CITY, N.Y. 10017

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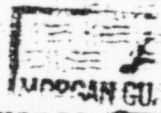
U.S. PLYWOOD-CHAMPION PAPERS INC.
777 THIRD AVE., NEW YORK, N.Y. 10017

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PAY
TO THE
ORDER OF

Liberty Mutual Insurance Company



MORGAN GUARANTY TRUST CO. NEW YORK
299 PARK AVENUE, NEW YORK CITY, N.Y. 10017

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JA 191

U.S. PLYWOOD-CHAMPION PAPERS INC.
777 THIRD AVE., NEW YORK, N.Y. 10017

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DATE

AMOUNT

3/9/72

\$ ***50,000.00***

PAY
TO THE
ORDER OF

Liberty Mutual Insurance Company

MORGAN GUARANTY TRUST CO.

NEW YORK

MAR 11 1972

MORGAN GUARANTY TRUST CO. NEW YORK
299 PARK AVENUE, NEW YORK CITY, N. Y. 10017

John G. Corcoran

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U.S. PLYWOOD-CHAMPION PAPERS INC.
777 THIRD AVE., NEW YORK, N.Y. 10017

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DATE

AMOUNT

6/9/72

\$ ***75,000.00***

PAY
TO THE
ORDER OF

Liberty Mutual Insurance Company

MORGAN GUARANTY TRUST COMPANY

JUN 13 1972

John G. Corcoran

MORGAN GUARANTY TRUST CO. NEW YORK
299 PARK AVENUE, NEW YORK CITY, N. Y. 10017

NEW YORK

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JA 192

CHAMPION INTERNATIONAL CORPORATION
777 THIRD AVE., NEW YORK, N. Y. 10017

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210

PAY
TO THE
ORDER OF

Liberty Mutual Insurance Co.

DATE AMOUNT

12/1/72

\$ ***200,000.00***

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MORGAN GUARANTY TRUST CO. NEW YORK
299 PARK AVE., NEW YORK, N. Y. 10017

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CHAMPION INTERNATIONAL CORPORATION
777 THIRD AVE., NEW YORK, N. Y. 10017

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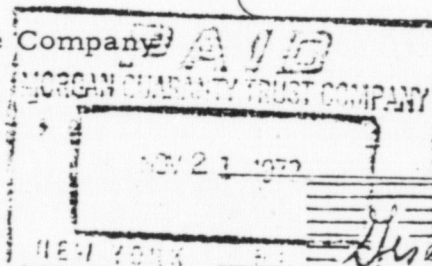
Liberty Mutual Insurance Company

DATE AMOUNT

11/7/73

\$ ***4,998.79***

MORGAN GUARANTY TRUST CO. NEW YORK
99 PARK AVE., NEW YORK, N. Y. 10017



⑆0210⑈0023⑆ 204 82 543⑈

⑈0000499879⑈

JA 193

CHAMPION INTERNATIONAL CORPORATION
777 THIRD AVE., NEW YORK, N. Y. 10017

11541 ¹⁻²³₂₁₀

DATE

AMOUNT

3/12/74

S ***4,557.10***

PAY
TO THE
ORDER OF

Liberty Mutual Insurance Company

MORGAN GUARANTY TRUST CO. NEW YORK
299 PARK AVE. NEW YORK, N. Y. 10017

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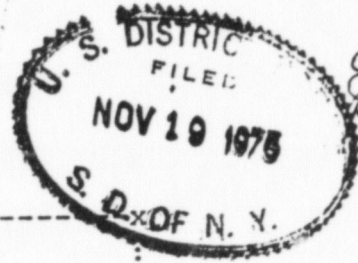
TRANSCRIPT OF PROCEEDINGS

(September 29, 1975)

(Pages JA195 to JA301)

Closed 11-17-75

JA 195



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHAMPION INTERNATIONAL CORPORATION,

Plaintiff,

-against-

CONTINENTAL CASUALTY COMPANY,

Defendant.

70 Civ. 5277

CES

Before:

HON. GUS J. SOLOMON,
District Judge.

New York, September 29, 1975;
9.45 o'clock a. m.
(Room 444)

APPEARANCES:

KRONISH, LIEB, SHAINSWIT, WEINER & HELLMAN, Esqs.,
Attorneys for Plaintiff;

BY: SEYMOUR SHAINSWIT, Esq.,
MARTIN TEICHER, Esq., of Counsel.

HART & HUME, Esqs.,
Attorneys for Defendant;

BY: JACK HART, Esq.,
CECIL HOLLAND, Esq., of Counsel.

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2 THE CLERK: Champion International Corp.
3 against Continental Casualty Company.

4 MR. SHAINSWIT: Your Honor, the plaintiff is
5 ready to present its case on damages.

6 MR. HART. The defendant is ready for whatever
7 the Court decides we ought to do today.

8 THE COURT: Let me make a little statement over
9 here.

10 I think what we ought to do is find out why we
11 are here and what the parties propose to do.

12 I wrote this opinion on the case dated May 1,
13 1975. At that time I was under the impression that the
14 only issue to be determined was the issue of liability,
15 because I didn't think there was any controversy over the
16 issue of damages and I got that not only from the -- maybe
17 not from the exact words but from the tone of the trial
18 and also from the statements which were made in the briefs.

19 Now, there is no question that these panels
20 were sold in small lots, they didn't occur at the same time,
21 the sales took place at different times, the amount of the
22 damage to each of the vehicles was less than \$5000, and
23 that the plaintiff had paid Liberty Mutual in excess of
24 \$1,600,000. I believe that some of it includes the fees
25 of Liberty Mutual. I don't know whether Continental is

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2 liable for those fees but it really doesn't make very
3 much difference because the limit of the policy is
4 \$1 million. It's for that reason that I was somewhat
5 surprised when the issue of damages was raised.

6 Now, that is the reason I suggested some time
7 later that maybe we could simplify the issues if a request
8 for admissions was made.

9 I am not interested or desirous of stopping
10 Continental Casualty from fully presenting its case, but
11 I really don't intend to retry the issue of liability.
12 I think there is enough in this record to enable the
13 Continental Casualty Company to fully present its case to
14 the Court of Appeals. I can't see any advantage in
15 pursuing the matter of the number of particular incidents
16 that occurred. I guess they ran into the thousands.

17 I have looked at the proposed findings of fact,
18 and while some of them may have some relevance, I think
19 that there is enough in the opinion to give the Court the
20 opportunity of deciding the question on the facts of this
21 case. I am not really interested in whether or not
22 another judge of this court has come to an opposite con-
23 clusion. He is not bound by my opinion and I am not
24 bound by his opinion. I have looked over my opinion
25 again, I have read the other opinion, and I have con-

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cluded that this is my best judgment.

But I want to tell you, Mr. Hart, if it will give you any comfort, I have been reversed before. So the Court of Appeals in their superior wisdom may find that I am wrong.

I wanted to know why we are here. What is it you want to have the plaintiffs establish?

MR. HART: Your Honor, the concern I have with your statement this morning is the difference between the Court's recollection and mine. I say that most respectfully. Continental Casualty in this case, as the record shows, has always come forward and said as soon as this case is ready to be presented we will be ready.

Then we appeared before your Honor and we kept saying, as I say now, that we do not believe that the plaintiff will trump up any record. We don't believe that. We do not believe that their witnesses will tell lies. We don't believe that. But I will remind your Honor that at the time we appeared before you and argued on the liability issue we pointed out that the facts were not in, that Judge Pollack had given an adjournment of time at the request of the plaintiff for the plaintiff to put its facts together, the facts Judge Pollack said should be presented, and your Honor said, my recollection

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2 is, that if you should find on the liability issue for the
3 plaintiff, whatever words you used, you would seriously
4 consider permitting Continental to go up by your certifica-
5 tion under the Interlocutory Appeals Act.

6 I mention this only because of my recollection.

7 THE COURT: I want to tell you something,
8 Mr. Hart. I think you are absolutely right and my
9 recollection is identical to yours.

10 MR. HART: Thank you, your Honor. So that
11 our position is simply this: We are dealing here, as far
12 as Continental is concerned, with a contract claim. It is
13 not a tort claim. We have our policy, the policy is before
14 the Court, your Honor has construed the policy on the basis
15 of the allegations in the complaint. The allegations
16 in the complaint and the amount of the damages, and I will
17 remind your Honor that when we called attention to the
18 fact in our briefs that the plaintiff at the time we
19 appeared before your Honor had an ad damnum of some
20 \$380,000 in the complaint, that we knew they were claiming
21 the higher amount and that we would have no objection, of
22 course, to their increasing the amount.

23 They then made a motion before your Honor,
24 which was granted with our consent, on the basis, as we
25 said explicitly at the time, that we did not wish any

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2 inference to be drawn from the fact we were consenting
3 that we were admitting that was the amount that could be
4 proved against this policy under the contract.

2 5 THE COURT: I agree with you completely.
6 I remember that.

7 MR. HART: Thank you, your Honor.

8 Therefore, after your Honor's opinion came down,
9 we went to the plaintiff to take depositions. I must
10 say for myself, with all due deference to my adversary,
11 that if the worst you can say about what I was trying to
12 do is that my questions were irrelevant, then if they had
13 the information what was there to be lost by their giving
14 it to us? Then your Honor would simply exclude it from
15 the trial. Now we are here on behalf of the defendant
16 with one exception, that the plaintiff is ready to present
17 its case and Continental Casualty is ready on its behalf.

18 My concern there, your Honor, is this: In my
19 view the best interests of Continental Casualty would be
20 served by a very early judgment in this case so if we are
21 so advised we can take an appeal promptly. I have no
22 desire to delay that.

23 But if, for example, just arguendo, your Honor
24 should hold that there is a failure of proof on the part
25 of the plaintiff, then obviously you would not dismiss the

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case and I wouldn't even dream that you would. You would then send us back to do the discovery that we should have done. What could have been lost by it? If the plaintiff had the information he should have given it to us. If he didn't, all he had to say is "I don't have it and I won't give it to you."

The only thing we do think we ought to have discovery on, in any event, is the question of whether or not this plaintiff has recovered or may recover for the same losses in cases which I now know more about in the last month than I knew a month ago, cases pending in California in the Federal Court in Los Angeles.

The contract is clear and the law is clear that since we have an indemnity agreement that if there is a recovery for the same losses from other sources then at least pro tanto there would be a diminution in our liability or, if they got it all, that's arguendo again, if it is a million-six and they collected a million-six in California where they are not limited by any policy amount, because, as I understand it, they are suing alleged tortfeasors, then it would have an effect on our obligation.

When we asked for the facts about that, Mr. Shainswit directed his witness, who had the knowledge, not to answer. I can't understand that. It's a public

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2 record out there. I have learned only within the last
3 two or three weeks, your Honor, about that case, and I
4 of course cannot say what is happening there but I learned
5 only within the last two or three weeks that the case is
6 pending in Los Angeles before Judge Clinko. I am told --

7 THE COURT: Judge who?

8 MR. HART: Clinko.

9 THE COURT: Not in Federal Court. He is not
10 a Federal judge.

11 MR. HART: Your Honor, I withdraw what I said
12 about the Federal Court. It's a State Court.

13 And there were intense discussions of settling
14 going on. I happen to know that. I learned it only in
15 the last two or three weeks after the plaintiff refused to
16 give us any kind of information on it.

17 I don't know whether that case has been settled,
18 I don't know whether they will agree that this is the same
19 claim that is being made here but that we are entitled to
20 know. I simply can't see an argument to the contrary.
21 That is the position of Continental here today.

22 Summing it up, we believe that the plaintiff
23 has a contract case. It is not enough for him to prove
24 against us what he might be able to prove against tort
25 feasers. He has got to come within the coverage of the

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2 contract. If he can do that, if his proof shows it,
3 then I don't believe that we are going to say they are phony
4 records. We have made that point from the beginning.
5 But if the records which they do present do not establish
6 a claim under this policy, then we will urge upon the Court
7 for the Court's determination whether there has been proof
8 under this policy and, if not, I am sure the Court will send
9 us back for more discovery, in which event, if I am wrong,
10 we will waste no time because your Honor will hold for
11 the plaintiff, say my objections are not warranted and that
12 will be the end of it. Otherwise we are taking up the
13 time of the Court, the plaintiff and the defendant in doing
14 what it seems to me should be done in discovery. I don't
15 see how it can hurt anybody if it is just irrelevant.
16 That, then, is our point.

17 THE COURT: I regret very much that I was out
18 3000 miles away and I couldn't sit down with you and discuss
19 these things.

20 I can tell you I was disturbed that two well
21 known lawyers were each vilifying each other and accusing
22 each other of bad faith constantly.

23 I might tell you that September 16th I spoke
24 before the Hart office, which is a big office in Portland,
25 on how to practice law, and I mentioned to them if three or

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2 four years ago somebody would tell me I would be lecturing
3 on federal trial practice to his firm I would suggest they
4 have their head examined. That is one of the most com-
5 petent offices, particularly on matters of federal
6 practice.

7 Then I went on primarily for the benefit of
8 the young people and said, "Don't vilify your opponent.
9 Even if he misstates the facts or the law or if he is diffi-
10 cult or abusive, it may make you feel better but it won't
11 help your case. If you make such a statement in a brief
12 or a letter, don't let anyone see it, destroy it."

3 13 Perhaps I should have written both of you and
14 told you these elementary facts, because I really don't care
15 what each of you thinks of the other. I do care in the
16 sense that I am sorry to see lawyers make such statements.
17 But it's not going to help the case, either of your cases.

18 I would like to find out what the real issues
19 here are. I don't think there is any question that if
20 you should pay a million dollars and they will collect it
21 from Danning -- and I will tell you something, I know the
22 bankruptcy practice out West -- if there is any large amount,
23 Danning will get quite a bit of it. I just cut them down
24 on fees.

25 MR. HART: The action in California which I

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2 have now learned something about very recently is
3 essentially against three defendants and they can each
4 respond. One is National Starch, which can respond for
5 any amount; the other is Mead Corporation, which can
6 respond for any amount; the third is the Glens Falls
7 Insurance Company. No bankruptcy is involved here.

8 THE COURT: Wait a minute. Under your policy
9 obviously if you are required to pay Champion International
10 you would be subrogated to the right of Champion International
11 and, as a condition, we could require Champion International
12 to assign all of its rights to the defendant to the extent
13 of the amount of the payment, and I am sure that arrange-
14 ments could be made to permit Continental Casualty to
15 prosecute the case either independently or with Champion
16 International.

17 The thing that concerned me was the problem of
18 the individual losses. If Mr. Jones and Mr. Brown and
19 Mr. Smith and Mr. White each had a loss of \$4000 or \$4500,
20 I think we have got enough in the record to show that these
21 were all under \$5000 and as you yourself pointed out, you
22 have no doubt that when Liberty Mutual paid Mr. Jones \$4500
23 they weren't just giving the money or falsifying their
24 records but they were doing it on the basis of their own
25 investigation and found out that this lamination had been

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2 bad and they paid it. So I don't see what useful purpose
3 is going to be served by interviewing all of those people,
4 and I said that the first day I ever met you, and I said,
5 "Why are we doing this if it's an issue of law?"

6 I regret that maybe Mr. Shainswit was a little
7 more difficult than he should have been on the issue of
8 depositions. Really, I don't give a damn what Mr. Brown
9 would have testified to on his opinion as to liability or
10 lack of it. It would have just left me cold. If you
11 wanted to waste your money and time you should have been
12 able to do it. Because of these personal differences,
13 let's not get into a problem of greater proportions than we
14 have.

15 Are you satisfied that Champion International
16 has paid in excess of a million dollars to these plaintiffs?

17 MR. HART: Your Honor, I do not know. Here is
18 the point. Your Honor said, and I agree fully, that it
19 would be ridiculous in this case for Continental to have
20 any idea that it is going to interview hundreds or dozens
21 or thousands of claimants. We never had that in mind.
22 That is what I meant when I said from the beginning that
23 most likely we would not raise any question about it.

24 Now your Honor asked do I have any doubt
25 Liberty Mutual paid out the money to these claimants, and

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2 I say to your Honor, with the fullest respect, here I
3 represent a client, the only evidence I have that Liberty
4 Mutual paid these claimants is the statement of counsel and
5 the further statement that the plaintiff here, Champion,
6 paid Liberty Mutual certain amounts of money. When I have
7 tried simply to get somebody to tell me that the records
8 allegedly put together by Liberty Mutual were put together
9 by Liberty Mutual and what they are so that the schedules
10 taken from these alleged records could go into evidence,
11 there wouldn't be any question about the schedule, then I
12 was told, "No, we won't tell you that."

13 MR. SHAINSWIT: I don't want him to say that.

14 MR. HART: Put on a witness and prove it.

15 THE COURT: Wait a minute, Mr. Shainswit.

16 I think that what we are having here is the very
17 thing that has caused all of our problems over here.
18 Let's keep our blood pressure down.

19 I know more about the problems in this case now
20 than I did yesterday. I was in doubt, Mr. Hart, of what
21 the problem was. Frankly, I wanted to tell you that I
22 was concerned that Continental Casualty didn't want to put
23 up a million-dollar bond or something like that because in
24 our local newspapers they have stories of the great losses
25 that Continental Casualty has been taking on malpractice

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1 insurance and the dangers of the company, that they had to
2 increase their rates two and three hundred per cent or
3 else the company was in real danger, and I thought that this
4 was the real purpose of this proceeding, to delay the putting
5 up of a bond. But apparently that is not true.

6
7 MR. HART: Nothing could be further from the
8 truth, your Honor.

9 THE COURT: I think Continental is using that
10 for the purpose of increasing their premiums on malpractice
11 insurance in Oregon and in California, where I saw these
12 statements of the tremendous losses that they were taking
13 on this medical malpractice insurance.

14 Now, if you will just sit down, Mr. Shainswit,
15 and relax and let me find out from Mr. Hart where we are.

16 Mr. Hart, you have already seen copies of the
17 ledger sheets and you have seen copies of the checks which
18 were made payable to Liberty Mutual in payment of these
19 claims. I think some of them were in the extent -- one
20 was \$225,000, one was \$100,000, there was one for \$4300,
21 and things like that.

22 There is no question of the authenticity of
23 those checks, is there?

24 MR. HART: No, sir.

25 THE COURT: Do we have claims agents from the

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2 Liberty Mutual here? Who are these people?

3 MR. SHAINSWIT: Mr. Fred Mason is the man who
4 was liaison between Liberty Mutual and Champion in connection
5 with effecting settlement adjustments. He prepared the
6 accounting records.

7 THE COURT: You can put him on the stand.

8 MR. HART: Yes, and I express my most extreme
9 objection.

10 Here we have been trying to get this for months.
11 I will go on. Let's put Mr. Mason on and I will conduct
12 my examination of Mr. Mason now, but he has been kept from
13 us. We were told he is irrelevant.

14 THE COURT: Wait a minute. Call Mr. Mason
15 here. We will find out what he has.

16 - -

17 F R E D G. M A S O N , called as a witness, being
18 first duly sworn, testified as follows:

19 THE COURT: What is your occupation?

20 THE WITNESS: Division claims service manager,
21 New York Division.

22 THE COURT: Go ahead, Mr. Shainswit.

23 DIRECT EXAMINATION

24 BY MR. SHAINSWIT:

25 Q For Mr. Hart's benefit, Mr. Mason, will you speak

louder than you usually do so we have no problem?

How long have you been employed by Liberty Mutual?

A For 28 years.

Q Would you indicate the positions you have held -

THE COURT: How is that going to prove or disprove any issue in this case whether he was with the company 28 months or 28 days or 28 years and all the positions he has held? Let's get down to business over here.

Q Turning to the calendar year 1970, what was the specific function that you were exercising for Liberty Mutual?

A I was New York Division claims service manager.

Q And in 1970 were you familiar with the arrangements that were made between the plaintiff Champion International and Liberty Mutual to investigate, adjust and settle the property damage arising out of delamination of vinyl covered panels?

A Yes, I was.

Q Will you indicate what those arrangements were, sir?

A In the early part of 1970, we had determined that we had exhausted our policy limit with U. S. Plywood-

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Mason - direct

2 Champion Papers which was in the amount of \$100,000.

3 At that time I wrote to Mr. Wynne, who was the director
4 of insurance for U. S. Plywood-Champion Papers and advised
5 him to place his excess carrier on notice.

6 Following that we entered into negotiation with
7 U. S. Plywood to continue to handle these claims on a
8 contract arrangement.

9 Q Is that contract arrangement reflected in this
10 communication that I show you dated April 17, 1970?

11 A That's correct. It's from Mr. Wynne to myself.

12 THE COURT: Has Mr. Hart seen this paper?

13 MR. HART: I don't know, your Honor. Very
14 likely not.

15 MR. SHAINSWIT: Very likely yes, because that
16 was appended to the response to the interrogatories that
17 we served in 1971, your Honor.

18 MR. HART: If we had had it marked on a
19 deposition I would have known what it is. I don't know.
20 When I see it I will be able to tell.

21 MR. SHAINSWIT: Is there any objection to
22 receiving this in evidence, Mr. Hart?

23 THE COURT: He is entitled to see it.

24 (Document handed to Mr. Hart.)

25 MR. HART: May I have a question on voir dire

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2 your Honor?

3 THE COURT: Yes.

4 VOIR DIRE EXAMINATION

5 BY MR. HART:

6 Q Mr. Mason, in this letter which is dated April
7 17, 1970, the reference at the top of the letter is:
8 re Continental Vinyl occurrence.

9 Do you remember that?

10 A If it's in the letter, yes.

11 Q Do you see where it says Continental Vinyl
12 occurrence?

13 A Yes.

14 Q I ask you, do you have any independent knowledge
15 that these claims that you were investigating all dealt
16 with Continental Vinyl panels?

17 A All the claims that we handled under this con-
18 tract arrangement were involving Continental Vinyl panels.

19 Q Do you know that of your own knowledge?

20 A That is what we are told by U. S. Plywood or
21 that is what we were told by U. S. Plywood.

22 MR. HART: Then I object to the letter or I
23 object to that part, in any event, that refers to it as
24 Continental vinyl.

25 THE COURT: Objection overruled.

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Mason - direct

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2 (Plaintiff's Exhibit 1 was received in
3 evidence.)

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4 THE COURT: Mr. Hart, I don't know why Mr.
5 Shainswit is putting on this evidence.

6 If you will keep still, Mr. Shainswit, I will
7 tell you something about your own pleading you don't seem
8 to know. He admitted that was the arrangement in the
9 answers to the interrogatories.

10 Why are you putting on this evidence and just
11 getting yourself in trouble about something that he has
12 already admitted?

13 MR. HART: We have not admitted they were
14 Continental Vinyl panels.

15 THE COURT: You have admitted there was this
16 15 per cent arrangement over here, and You have done that
17 at least half a dozen times.

18 MR. HART: If your Honor is saying we admitted
19 15 per cent was the arrangement and that we agreed that is
20 a reasonable figure, the answer is yes, we did.

21 THE COURT: Sit down, both of you.

22 Did you have people under you going out and
23 examining the claims made by various claimants under the
24 policy?

25 THE WITNESS: Yes, we did. We had both our

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2 own people, our own employees and also employees of people
3 who would appraise damage.

4 MR. HART: I respectfully object to your Honor's
5 question, particularly the part that says "under the policy".

6 THE COURT: You can have an objection to every-
7 thing I say, Mr. Hart, but I am going to bring it out anyway.
8 So you don't have to make any more objections. I have
9 given you a running objection.

10 MR. HART: Thank you.

11 BY THE COURT:

12 Q Were the examinations made for the specific
13 companies to whom vinyl or laminations were sold?

14 A We created individual manufacturers files such
15 as Cobra. Then these individual claims under the manu-
16 facturers were reported to us and we inspected the
17 individual units of that manufacturer either by using our
18 own employees or hiring people to appraise the damage
19 for us.

20 Q Have you got the records of those sheets for
21 each manufacturers?

22 A Yes.

23 THE COURT: Could you produce those?

24 MR. SHAINSWIT: Yes, your Honor.

25 If your Honor please, may I make a suggestion

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Mason - direct

2 with Mr. Hart's approval? There has been reference to
3 data compilation sheets that have been prepared which
4 concealedly accurately summarize the contents of the Liberty
5 Mutual file. I believe after these files are identified
6 that we can receive into evidence as part of the record
7 the data compilation sheets served on Mr. Hart so that we
8 can have that at least reflecting the settlements in the
9 files, and so on, so that we don't have to leave with the
10 Court 20 or 30 bound folders.

11 THE COURT: I just wanted to see how these
12 individual adjustments were made and to show them to Mr.
13 Hart so that he can determine for himself whether it would
14 satisfy his objection.

15 I notice that there is these Cobra Industries
16 that were paid \$361,000. Do you have those files here?

17 MR. SHAINSWIT: Yes, Your Honor.

18 Q Do you have the individual files of the claimants
19 there?

20 A Yes.

21 THE COURT: Would you show them to counsel,
22 Mr. Hart.

23 (Documents handed to Mr. Hart.)

24 MR. HART: May I ask a question?

25 THE COURT: Surely.

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2 VOIR DIRE EXAMINATION

3 BY MR. HART:

4 Q Mr. Mason, with respect to these various
5 compilations, were they all prepared by the same person?

6 A I don't quite understand your question.
7 If you are referring to what you have in your hand, that
8 is a compilation. Mr. Foster and assistants working with
9 Mr. Foster prepared those, just combined files together
10 for your convenience or for everyone's convenience.

11 Q Who is Mr. Foster?

12 A He is now a New York Division claims service
13 manager, same title as I have.

14 Q And with respect to any of these where Mr.
15 Foster's name might not appear, would that be somebody in
16 your employ, Liberty Mutual's employ?

17 A I don't understand your question.

18 Q I turn pages at random and I see a letter signed
19 by Crawford & Company, Robert L. Krier, adjuster in charge.
20 What is that?

21 A That is a man whom we hired to do inspections
22 to determine the fact that the damages did occur to the
23 trailers in question. He was hired to determine damages
24 only.

25 Q You hired adjusters in the field and they

1 gws Mason - direct

2 reported to you?

3 A They reported -- in that matter, they reported
4 to Mr. Lennon, who was then the claims manager in South
5 Bend, Indiana.

6 Q Was Mr. Lennon employed by Liberty Mutual?

7 A Liberty Mutual claim's office in South Bend,
8 Indian.

9 Q The information, then, in many cases was
10 submitted to Liberty Mutual by independent adjusters hired
11 for the purpose?

12 A We do not use independent adjusters to adjust
13 claims. We use independents to inspect and appraise
14 damage to, such as this one, a house trailer, and we rely
15 upon their information transmitted back to us and we make
16 the adjustments.

17 Q That was the general manner in which these
18 claims --

19 A It was the final manner in all of our claims,
20 yes.

21 Q The information contained in these files with
22 respect to each one is all the information that you have
23 available with respect to that claim, each claim?

24 A Yes, they are the files.

25 MR. HART: Your Honor, on behalf of Continental,

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2 we have no objection to the admissibility of these records,
3 but we do not concede anything more than that we have no
4 objection to their being admitted.

5 THE COURT: I don't understand. Do you want
6 testimony of these adjusters to come into court and say,
7 "I examined the loss and I saw that it would cost \$3222"
8 or some other figure, "to repair this damage and that I so
9 notified Liberty Mutual and Liberty Mutual authorized the
10 payment of a check in that amount"?

11 Then do you also want someone from Champion
12 International to say that "The X Company called us and said
13 that their lamination was bad as a result of this material
14 which we purchased and, therefore, we referred it to Liberty
15 Mutual for an investigation"?

16 Is that what you want?

17 MR. HART: No, sir, not at all.

18 THE COURT: I don't know what you want. That
19 is the problem.

20 MR. HART: Your Honor, I repeat, we are dealing
21 with a policy. The policy has a policy period. I do
22 not know at this moment what significance the plaintiff and
23 the Court places on the allegation that all of these
24 delimitations related to vinyl panel purchased from
25 Continental Vinyl in California. I cannot make it out,

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that is, I cannot make out the significance attached to it by the plaintiff and by the Court, and I have been trying to find out. If it is significant, then I, for example, would like somebody to say so who has knowledge. If it is not, then it's immaterial.

THE COURT: Mr. Hart, will you tell me that over again in plain simple language? I don't know what you are talking about.

MR. HART: The allegations by the plaintiff and the statement in your Honor's opinion says that all of these laminated panels were panels purchased by Champion from Continental Vinyl.

THE COURT: From Continental Vinyl?

MR. HART: Yes, sir.

THE COURT: Is that the manufacturer?

MR. HART: Yes, sir.

THE COURT: Do you deny that?

MR. HART: I don't admit it. I just would like -- I have not been able in the deposition to get somebody to say this is true, and I right now cannot say it and if it's material I believe it has not been established.

THE COURT: You want to know whether these panels were purchased from Continental?

MR. HART: Yes, sir.

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Mason - direct

2 THE COURT: And, if so, when?

3 MR. HART: Yes, sir.

4 THE COURT: Can you furnish that information
5 to him.

6 MR. SHAINSWIT: It was conceded by him, your
7 Honor, on the trial on liability.

8 THE COURT: When?

9 MR. SHAINSWIT: During the period 1969 and
10 1970. He says that in his own brief so we didn't have
11 any occasion to go into that question. That is not in
12 dispute. What we are proposing to do on this hearing on
13 damages, Mr. Hart had said, in response to the request
14 for admission, that it was irrelevant for purpose of this
15 hearing to go into the question as to whether Continental
16 was the sole source. Therefore, he was not going to
17 admit it because he said he was taking an appeal from the
18 issue on liability and the operative facts reflected in
19 your opinion.

20 I don't see how Mr. Hart at this hearing has
21 the right, with all due respect, to start questioning in
22 connection with the issue that he himself said was irrele-
23 vant for purposes of this hearing. He took the position
24 at the trial on liability in his brief, your Honor, that
25 the panels were sold by Champion to the manufacturer in

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relatively small lots as they were required and either were shipped from stocks maintained at Champion's various branches throughout the country or were shipped directly from Continental Vinyl upon directions from Champion.

He took the position at the trial on liability he was basing it on the fact that irrespective of whatever the source of these panels was, that the damage to each vehicle was a separate occurrence.

That was the issue that he tried on that question and no other issue, your Honor.

Your Honor indicated for purposes of this hearing, since Mr. Hart was questioning the payments that were made, we presented the checks. In response to our request for admission, he said that he wasn't prepared to concede the accuracy of the accounting records that we supplied to him. That's why Mr. Mason is here to satisfy him on that point.

I am prepared, with all due respect, to present our case on damages in conformity with the Court's direction. It may simplify matters if we go along. I give Mr. Hart free license to interrupt me and to concede a particular subject that we are going into so we don't have to go into it.

MR. HART: We asked these questions on the

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Mason - direct

2 deposition of Mr. Brown, and Mr. Shainswit told him not to
3 answer the questions.

4 THE COURT: Who is Mr. Brown?

5 MR. HART: He was their witness that we deposed.

6 Why did they keep it from us? If it's so --
7 that is my whole point, your Honor. We are conducting
8 discovery here.

9 THE COURT: You are not going to discover.
10 I want to say that this is a surprise to me, that at this
11 late stage you are questioning that the cause arose from
12 vinyl panels purchase by Champion International during the
13 policy period. Th is is something that I never knew was
14 in issue. If it is in issue, I think we ought to know
15 about it. Is it in issue?

16 MR. HART: Sure, your Honor. It has never been
17 established. We asked questions about it and could not
18 get the answers to it. If it's significant, and the
19 plaintiff seems to say it is and the Court's opinion says
20 it is, all we want is for them to say so.

21 THE COURT: Can Mr. Brown testify to those
22 things, do you know? Is he in a position --

23 A VOICE: Based on my information from my
24 conversation with various U. S. Plywood managers.

25 THE COURT: What else did you want to know,

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Mason - direct

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2 Mr. Hart? I want to get all these things because I will
3 send it to a Master and if Mr. Shainswit proves it I
4 will assess attorney's costs for each thing he proves.

5 Mr. Hart, there is no use arguing with me and I
6 don't want you to interrupt me constantly. I am asking
7 you a simple question. You tell me what you want them
8 to prove here and I am going to send it out to a Master
9 to make that determination and I am also going to tell you
10 that if, as a result of that proof, I find that your action
11 was unreasonable, I am going to assess your company,
12 regardless of the outcome of the case, with attorney fees
13 and costs and expenses.

14 MR. HART: Your Honor has a right if we have
15 been unreasonable. I say to your Honor, however, on this
16 one point, that I asked those questions on the discovery
17 and they refused to answer them.

18 THE COURT: Mr. Hart, will you tell me just
19 once again. I am going to get one of the leading lawyers
20 in New York to take this. I am going to ask each of you
21 to pay half and then if I decide later that it's your
22 fault, I am going to assess your costs. So you tell me
23 what you want the plaintiffs to prove.

24 MR. HART: Your Honor, I think it is only fair
25 if we give somebody a hard time we should not be giving

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what your Honor says would be so, but it is not so.

THE COURT: Mr. Hart, you have made your statement. I am just telling you that regardless of the outcome of the case I am going to assess your company with costs and attorney fees and expenses if I find that this was an unreasonable act.

Go ahead.

MR. HART: I say that if it is significant to this case, if your Honor holds it is significant that the source of the laminated panels was Continental Vinyl and not some other source, that we are entitled to have that fact established. On the other hand, if your Honor holds that the source of the defective panels, that is, the place they were purchased by Champion, is not material to this case, then that issue has no place in the case.

THE COURT: What else do you want him to prove? You just tell me because I want to know what to give to the Master.

MR. HART: Then we would like to have it established when these purchases were made, and apropos of that --

THE COURT: The purchases were made from the suppliers?

MR. HART: From the manufacturers by Champion.

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2 Here again if your Honor should hold that that
3 issue is not material to the determination of the case,
4 then of course we do not have to have the information.

5 THE COURT: If the purchases were made in 1861,
6 obviously they wouldn't be covered by the policy. It would
7 have to be during the policy period.

8 MR. HART: That is for the Court to decide.
9 The relevancy of our inquiry depends on the holding by the
10 Court.

11 THE COURT: Go ahead.

12 MR. HART: Then we would like to know when were
13 the sales made by Champion to the manufacturers of these
14 allegedly defective panels.

15 THE COURT: When were the sales made to the
16 manufacturers?

17 MR. HART: By Champion -- the manufacturers of
18 the vehicles by Champion.

19 THE COURT: When were the sales made to the
20 manufacturers of the vehicles?

21 MR. HART: Yes, sir, by Champion.

22 Here again if your Honor should hold that those
23 facts are not material, then of course we don't have to
24 have that information. If they are material, then we
25 would like to have the information.

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Mason - direct

2 We would like to have the dates of manufacture
3 of the vehicles by the manufacturers, and here --

4 THE COURT: That is the manufacturers of the
5 vehicles?

6 MR. HART: Yes, sir. Here, your Honor, we
7 have some and if they are going to rely only on those
8 vehicles concerning which we have statements under oath
9 from certain manufacturers, then we will accept them.
10 They don't have to prove that, we will accept a sworn state-
11 ment which we took instead of going through personal
12 deposition. With respect to those where there is not
13 sworn testimony by the manufacturer of the vehicles, then
14 the alleged dates of production by those manufacturers should
15 be established.

16 Here again, it depends on whether or not the
17 Court holds that the date of manufacture of the vehicle is
18 material to the determination of the damages in this case.
19 If the Court should hold that it is not, then of course
20 we would not need that information.

21 Then we would like to know when it is claimed
22 these delaminations took place. Here I will say two
23 things:

24 One, we are of course not asking that such a
25 date be fixed with any kind of serious precision. We will

1 gws

Mason - direct

2 take an approximate date and I will call the Court's
3 attention to the following point which indicates the import-
4 ance of what we are saying here.

5 A number, a considerable number, of checks
6 paid in settlement by Liberty Mutual on behalf of Champion
7 were drawn and paid after the expiration of the policy
8 period. Now, obviously we admit that the date that the
9 check was drawn does not necessarily call into question the
10 date when the accident happened or the occurrence took
11 place which establishes the liability, but it does indicate
12 to us that somebody should tell us that those checks that
13 were paid after our policy period referred to damaged
14 vehicles, the damages having taken place during the policy
15 period.

16 Here again, if your Honor should hold that it
17 is immaterial when the delaminations took place, whether
18 within or without the policy period, then of course we
19 would not need that information.

20 Then, your Honor, apart from that, because that's
21 all the information we want on the question of delamin-
22 ation now, when your Honor made a statement earlier regard-
23 ing Continental's right to subrogation in the event that
24 there was a recovery in California, I fully accept your
25 Honor's statement and if that can be somehow made part of

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1
2 whatever this decision is here, it will be satisfactory
3 to Continental Casualty Company.

4 THE COURT: All right. I don't recall whether
5 the source of this material was all from Continental Vinyl.
6 Is that true or was it some place else?

7 MR. SHAINSWIT: It is true, your Honor. It
8 all came from one common source, Continental Vinyl.

9 THE COURT: And you are in a position to prove
10 that?

11 MR. SHAINSWIT: If we have to, your Honor, yes.
12 I want to say --

13 THE COURT: I don't care what you want to say.
14 I am going to find out later -- I will take a look at the
15 record, take a look at the admissions that were made.
16 If I find this is an unreasonable request at this time you
17 have nothing to worry about because you are going to get
18 attorney's fees and costs.

19 MR. SHAINSWIT: May I say one sentence, Judge?
20 I promise only one sentence.

21 THE COURT: Okay.

22 MR. SHAINSWIT: In connection with the position
23 that Hart & Hume took in response to our request for
24 admission, the affidavit of Cecil Holland, Mr. Hart's
25 partner, at page 9, he urged upon the Court that it was

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1 irrelevant to this hearing on damages to go into the
2 question of the source of the panels, whether they were
3 Continental Vinyl or any other source, and I think that in
4 view of that statement, your Honor, there can be no question
5 that there is absolutely no justification for prolonging
6 these proceedings by going into a subject that defense
7 counsel themselves maintained was outside of the scope of
8 the hearing on damages. We are not here to retry the
9 issue of liability.
10

11 THE COURT: I know that, Mr. Shainswit.

12 We are here to try the issue of damages. Now, I don't
13 know what difference it makes if you bought everything from
14 Continental or you didn't buy it from Continental, but
15 apparently that is bothering Mr. Hart, and, therefore, if
16 he is making a claim that it is different, the liability
17 damage is different, then that will have to be established.

18 MR. HART: Your Honor, just the opposite.

19 I do not make such a claim. I would believe that it does
20 not make a difference myself, but I have said, and this is
21 our only point, the plaintiff keeps pressing that point,
22 your Honor made a statement about it in your opinion, and
23 from his statement and your Honor's opinion it has come
24 through to me that you might regard it as being material.

25 THE COURT: I don't think it makes any differ-

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2 ence at all, but you have been pressing this and I thought
3 it means something to you.

4 MR. HART: Only if your your Honor holds it
5 is material. I don't think it is. But if your Honor
6 says it is, then I would liek to have it established.

7 MR. SHAINSWIT: With all due respect --

8 THE COURT: I think it ought to be established
9 and I will tell you why, because if this is one occurrence
10 then I think that the fact that it comes from one source
11 would be important and therefore I think from that point of
12 view it is important and you had better put on your proof.
13 I thought there wasn't any controversy about it before.

14 MR. SHAINSWIT: I didn't think there was any
15 such question either.

16 To make one thing clear on the record, I was
17 not in any way maintaining that that is part of any evidence
18 or proof that plaintiff intended to offer on the question
19 of damages. We stood on the record that was already
20 made on liability. We were addressing ourselves to
21 damages. We were not preparing or presenting any evidence
22 on that subject on damages, and we are willing to stand on
23 the record that has been made.

24 THE COURT: I don't know what the purpose of
25 this thing is now. Are you going back to the question

1 gws Mason - direct
2 of liability?

3 A No, sir. We have, as I say, an action on a
4 contract. We have a policy. Your Honor in your opinion
5 made reference to the fact that all of this was bought from
6 Continental Vinyl. The plaintiff has pressed it.
7 I state to the Court I myself don't see any great relevancy
8 about it.

9 THE COURT: How much would it take you to bring
10 in the evidence that all of it was bought from Continental
11 Vinyl?

12 MR. SHAINSWIT: We have the evidence already
13 in Cartons that are being utilized in another litigation.
14 They have already been made available to defense counsel
15 last year. I assume that we can get these cartons back
16 within about a week or two weeks.

17 THE COURT: Where are they -- in California?

18 MR. SHAINSWIT: They are in California in the
19 possession of California counsel.

20 MR. HART: Of course, I don't mean to cross-
21 examine witnesses and make a big deal of it, but if the
22 plaintiff says it's material and the Court believes it's
23 material, somebody ought to establish it. That's all.
24 It ought to be very easy to establish. We are not going
25 to raise any question about authenticity of documents, and

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2 so on, as long as somebody knows.

3 THE COURT: I am willing to say this:

4 If you will stipulate that that has nothing to
5 do with the liability of the company but merely on the
6 question of damages as to whether it's one occurrence or
7 many occurrences -- no -- on the amount of damages
8 Continental Casualty is liable for, then I will rule it is
9 not necessary. But if you are going to then contend in
10 the Court of Appeals that by reason of the fact that this
11 vinyl was purchased from other comes, that that would go to
12 the question of whether there was one occurrence or many
13 occurrences, I am going to say that they had better produce
14 that evidence.

15 MR. HART: Your Honor, I would not expect to
16 contend that the source of the purchase of panel by
17 Champion has any materiality to the question of whether
18 there was one or more than one occurrence. I would not
19 so contend.

20 I also, therefore, as a corollary, believe
21 that it's immaterial that they bought it from Continental
22 Vinyl, but I believe that it's so easy to establish and
23 on the deposition we asked them to establish it, that we
24 are taking up so much time over a really simple thing
25 which I would probably concede promptly upon somebody coming

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1 in with some evidence.

2
3 THE COURT: I am sorry that I wasn't here
4 earlier, Mr. Hart, so we could have had this kind of a
5 discussion before. Under the circumstances, therefore,
6 I will rule that number one is not necessary.

7 Now two. When were the purchases made by the
8 manufacturers of Champion? Doesn't that come into the
9 same category as number one?

10 MR. HART: I believe so, your Honor. If your
11 Honor so holds, then we don't need that information.

12 THE COURT: I wanted to know, is there any
13 relevancy in the issue of whether these purchases were
14 made before the policy period?

15 MR. HART: Not in my opinion, but obviously
16 the Court might disagree with that, plaintiff might disagree
17 with that. In our view of the case, it would not be
18 material.

19 THE COURT: What about that, Mr. Shainswit?

20 MR. SHAINSWIT: It is not material.

21 THE COURT: Then we will leave that one off.
22 If you disagree, let's hear it.

23 Now, number three. When were the sales made
24 to the manufacturers of the vehicles by Champion?

25 MR. SHAINSWIT: Your Honor, just for purposes

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2 of clarification, there seems to be an ambiguity. Could
3 your Honor please repeat the second subject?

4 THE COURT: The second one?

5 MR. SHAINSWIT: Yes, sir.

6 THE COURT: When were the purchases made from
7 the manufacturers by Champion, in other words, when did
8 Champion make the purchases --

9 MR. SHAINSWIT: Of the vinyl?

10 THE COURT: Yes.

11 MR. SHAINWIT: In our view of the case, it is
12 not material.

13 THE COURT: Now the third one is, when did
14 Champion make the sales to the manufacturers o the vehicles?

15 That is your third point, isn't it, Mr. Hart?

16 MR. HART: Yes.

17 THE COURT: Is it the point that it should have
18 been made during the policy period?

19 MR. HART: Your Honor, I do not believe so myself.
20 There is one case in the Fifth Circuit where the statement
21 made by the Court was clearly unnecessary to the decision
22 made by the Court, but the Court referred to the number of
23 sales, apparently equating the number of sales with the
24 number of "occurrences".

25 I think the word just slipped in, but in light

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of the fact there is that Fifth Circuit case, then if your Honor holds that that is material --

THE COURT: Let me see my opinion. Let me
get my opinion out. I will have to read it.

Mr. Hart, I think you know how meticulous I tried to be in preserving your right to show how this case arose, that it was, for example, Champion sells construction materials, among other things. In 1969 and 1970, Champion bought a large number of vinyl-covered plywood panels from Continental Vinyl Products. Champion then sold the products to many manufacturers who installed them in the interiors of houseboats, house trailers, motor homes.

Then there is a note, in order to be sure you were adequately protected I had that statement, the panels were usually sold in small lots as required by the production schedules of the purchasing manufacturers. For example, Cobra Industries, Inc. received 105 shipments of panels from January, 1969, to March, 1970. Cobra manufactured 224 of the damaged vehicles from April 1, 1969, to November 19, 1969. Nauta-Line manufactured 260 of the damaged houseboats from April 3, 1969, to June 26, 1970.

I did this so there wouldn't be any mistake about your position and your contention that this was many occurrences rather than one occurrence.

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2 MR. HART: I appreciate that, your Honor, and
3 you were dealing, I believe, with all deference, with the
4 allegations made by the plaintiff, a number of which we
5 were not disputing.

6 With respect to Nauta-Line and Cobra, we had
7 sworn statements from them and, as I said earlier, we
8 accept them.

9 THE COURT: I think I got that from your briefs.

10 MR. HART: We were making arguments, we were
11 submitting briefs, of course, your Honor. Now you take
12 the question of the number of sales made during the policy
13 period. In my opinion, which I submit with deference,
14 it is immaterial.

15 THE COURT: I do, too, but the question is,
16 it may make some difference if there were sales made after
17 the policy period and if you are contending that the proof
18 of damages is uncertain because they have not established
19 with specificity and particularity that all of these sales
20 were made during the policy period, I think that should
21 be raised now, they should submit some evidence.

22 What is your point? Is that your point?

23 MR. HART: Only because your Honor has said
24 what your Honor has said. It is the view of the
25 defendant in this case at the time when these panels were

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1 purchased by Champion, the time when they were sold by
2 Champion, the time when they were put into the vehicles, all
3 of those things are immaterial to the determination of
4 liability here. Your Honor has disagreed with us on
5 that.
6

7 THE COURT: I don't know how I have disagreed.
8 In what way, Mr. Hart? I just said that in my view it
9 was one occurrence, which seems to confirm your contention
10 that the material which you now request is immaterial.

11 MR. HART: If your Honor so holds we will go
12 on, I don't need to have the information. I believe that
13 your Honor's last statement, leaving out the conclusion
14 that your Honor found in your opinion, is indeed the
15 position taken by the defendant. We regard those facts
16 as being immaterial. We thought from your Honor's
17 opinion, because your Honor did not identify what the one
18 occurrence was, not explicitly, that your Honor might regard
19 those items as being material, that the plaintiff regards
20 them as being material, and if he does and if the Court
21 does, then all we want is the proof in the record, not to
22 make a big deal of it but to get the proof into the record.
23 It ought not to be very difficult for the plaintiff to say
24 how many sales there were and when they were made. All
25 you have to do is take it off the books.

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1 gws

2 THE COURT: Have you got those here?

3 MR. SHAINSWIT: No, your Honor. We are dealing

4 with 26 manufacturers, various branch managers, and we are
5 dealing with hundreds of documents, separate invoices.
6 It is absolutely incredible.

7 THE COURT: Are you now contending it is
8 material or not material?

9 MR. SHAINSWIT: It is not material.

10 THE COURT: That is what Mr. Hart says.

11 MR. HART: There we have the ad hominem again.
12 I assure you when we appeared before Judge Pollack one of
13 the things he instructed us to get was the number of sales
14 and when they were made. Even then I don't know whether
15 it's material or not until the Court decides whether it's
16 material or not, but to say that this is coming up suddenly
17 as though I just thought of it is certainly not true.

18 THE COURT: Mr. Hart, may I suggest once again
19 that we not go into these attacks against each other and
20 the inferences that he is making in his statements con-
21 stitute a reflection upon you. If we just forget all
22 these other things and try to determine the facts without
23 regard to that, I think we will get along much better.

24 That goes for you, too, Mr. Shainswit.

25 MR. SHAINSWIT: I fully recognize that, Judge.

10

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2 This is not a one-sided admonition. I just want to make
3 one thing clear so that we all understand.

4 We are dealing here with a claim for a million
5 dollars against Continental Casualty, not the million-six.
6 We took five depositions and we stopped at the five
7 depositions because the testimony and the exhibits and
8 the responses covered the million. It is unnecessary for
9 our case to establish more than the limit of liability
10 under the Continental Casualty policy.

11 In connection with the five depositions that
12 were received by the Court in evidence, we have the
13 specific interrogatories and responses, the cross inter-
14 rogatories that Mr. Hart propounded, we have a complete
15 case in connection with the relationship between the
16 manufacturer --

17 THE COURT: I don't know your point at all.
18 I don't know what you are talking about, Mr. Shainswit.

19 MR. SHAINSWIT: All I am saying is in terms
20 of what Mr. Hart is opening up in terms of trying to
21 determine how many sales there were with respect --

22 THE COURT: He says it is immaterial, you said
23 it is immaterial. Why are you coming in with all this
24 other information?

25 MR. SHAINSWIT: I am merely pointing out that

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2 there is no occasion to even consider materiality or
3 immateriality because the entire record --

4 THE COURT: Why are you taking ten minutes to
5 tell me that?

6 MR. SHAINSWIT: I apologize.

7 THE COURT: On the basis of what you say, that
8 the date of the sales made by Champion to the manufacturers
9 of the vehicles for the purposes of damages is immaterial,
10 I am going to say it is not necessary for you to produce
11 that and I am going to say that you and Mr. Hart agree.
12 Is that clear?

13 MR. HART: Yes, sir. We believe it is
14 immaterial.

15 MR. SHAINSWIT: Your Honor's statement is
16 correct.

17 THE COURT: That takes care of 3. Now we
18 are going to go to 4, the dates when these vehicles were
19 manufactured by the manufacturers of the vehicles.

20 MR. HART: Here again, your Honor, we believe
21 that that is immaterial. We do not know how your Honor
22 would rule on that. We do not know the extent to which
23 the plaintiff relies on that. But again, if your Honor
24 holds that it is material, if the plaintiff claims it is
25 material, then that has to be established.

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2 THE COURT: Mr. Hart, I don't understand
3 certain things. Obviously when these vinyl panels were
4 installed in vehicles, now, if before the policy period
5 Continental had purchased these panels and had sold them to
6 manufacturers all before the policy period, there may be
7 a doubt as to whether it would be covered under the policy.

8 Are you contending that some of these vinyl
9 panels were purchased before the policy period and installed
10 by manufacturers of vehicles before policy period?

11 MR. HART: No, sir. We believe the time when
12 the panels were purchased is immaterial, we believe the
13 time they were sold by Champion to the manufacturers of
14 vehicles is immaterial, we believe that the time when the
15 panels were installed in the vehicles themselves is
16 immaterial. We are asking if the Court joins or if
17 the Court confirms our belief. Then we don't need any
18 evidence about any of that.

19 THE COURT: What about that, Mr. Shainswit?

20 MR. SHAINSWIT: I don't believe it is necessary
21 on the question of damages to establish the specific date
22 of installation of each of the 1400 vehicles.

23 THE COURT: Okay. So you agree with Mr.
24 Hart?

25 MR. SHAINSWIT: That on the limited issue of

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damages it is not necessary to go into that.

THE COURT: The next one is, when did the delaminations take place, in or outside the policy period?

Do I state the question properly, Mr. Hart?

MR. HART: Yes, sir.

THE COURT: Do you think it's material?

MR. HART: We believe that is the crux of our position, your Honor.

THE COURT: When did the delaminations take place, within or without.

MR. SHAINSWIT: I disagree with that, your Honor. The question is one of construction of the policy as a legal question from the point of view of determining the coverage and the liability for damages.

THE COURT: In other words, is it your position that if defective vinyl-covered panels were sold and that the delaminations didn't take place until after the policy period, it would be covered anyway?

MR. SHAINSWIT: That's correct, your Honor, as long as the unit was manufactured within the policy period utilizing the defective panels. That, your Honor, I submit is a question of law that your Honor could determine.

MR. HART: I understand what Mr. Shainswit said,

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but it appears to me to be inconsistent with what he said a moment ago, namely, that the time of manufacture of the vehicle is immaterial. He just said that and your Honor had us both say yes, we believe it is immaterial. Now he says it is the crux of his position.

MR. SHAINSWIT: No, sir.

THE COURT: We are talking about 5.

MR. HART: Yes.

THE COURT: When did the delaminations take place.

MR. HART: Right. We say it is the crux of our position. Then your Honor addressed Mr. Shainswit and Mr. Shainswit said the only thing that mattered is the date, as I followed him, the date when the vehicles were manufactured. But a moment ago he said the date when the vehicles were manufactured is immaterial. So obviously he will take whatever position he takes, but right now it appears to be inconsistent.

MR. SHAINSWIT: Mr. Hart, I thought I made my position clear that on the question of damages it is not necessary for the plaintiff as part of its case to establish the specific date on which any particular manufactured unit was completed. I am not here retrying liability or definition of an occurrence. We fought that out

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2 in connection with the proposed additional findings.

3 Your Honor has taken a position that your opinion
4 adequately summarized the position of your findings on
5 liability. I adhere to that.

11 6 I am here in conformity with your Honor's
7 directive. Otherwise, what Mr. Hart would be proposing
8 is on the issue of damages we would be fragmentizing the
9 occurrence, the single occurrence, and having separate
10 hearings with respect to each vehicle to determine whether
11 a process of delamination commenced, at what point it
12 progressed so it became visible to claimant. We are
13 dealing with recreational vehicles that are put in
14 storage. If we have all those issues, 1400 trials.

15 THE COURT: I don't see your point, Mr. Hart.
16 Would you mind explaining it to me?

17 MR. HART: The position of the defendant here,
18 your Honor, is that an occurrence is an event and not a
19 proximate cause of an event. That is our position.

20 Your Honor disagreed with that. We respect-
21 fully recognize that. So that means our position,
22 namely, that an occurrence or an act is the event which
23 is the damage for which the policy must respond, then the
24 time when the event occurred which constitutes the damage
25 is the crux of the case from our point of view, and if I

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1 may, your Honor, in your opinion you said that, in substance,
2 you weren't quite sure yourself that this sort of thing is
3 covered by the policy but that since we have admitted it
4 you are going to accept it.
5

6 We do admit it. We believe what occurred here
7 comes within the product liability coverage of the policy.
8 The question is when did the damage take place for which
9 the policy must respond, in our view of the case.

10 If your Honor holds that that is not a correct
11 statement of the issue to be determined and that proximate
12 cause, which I say respectfully we could not find a
13 definition of in your opinion, is the test, well, then,
14 whatever conclusion follows from that will follow. But
15 if the event itself, as we say, constitutes the occurrence,
16 then the time when the event took place is crucial to our
17 view of the case.

18 THE COURT: That is what I thought. You are
19 not trying the question of damages you are retrying the
20 question of liability again, and if that was crucial to
21 your case, you should have presented this on the issue of
22 liability and not on the issue of damages, which is the
23 sole issue that we are here determining.

24 The question of the dates on which the delamin-
25 ations took place, in my view of the issue of liability, I

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2 thought there was no question about it, that these were
3 within the policy period, and that wasn't raised either in
4 the discussion or in the briefs, and I have decided that
5 question.

6 So now under those circumstances on the issue of
7 damages, I am going to hold that 5 is not necessary, the
8 date of the delaminations.

9 MR. HART: I most respectfully say my recollec-
10 tion of what was raised before your Honor is different from
11 your Honor's recollection.

12 THE COURT: It is perfectly all right. The record
13 will speak for itself.

14 MR. HART: On the other hand, if some of these
15 things took place outside of the policy period, then if that
16 does not go to determining what damages --

17 THE COURT: Mr. Hart, under my theory of the case,
18 and I think I made that clear, if the occurrence took place
19 during the policy period, even if the delaminations did
20 not occur until after the policy period, it would be covered.
21 That was the theory upon which I decided the case.

22 MR. HART: Your Honor has written your opinion.
23 We have had difficulty ourselves in identifying what was
24 the occurrence in your Honor's view.

25 THE COURT: Is there anything else, then? Then

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2 it is no longer necessary for them to set out each check
3 that was issued to a particular claimant, and I think you
4 have agreed that over a period of time \$1,600,000 was spent
5 not only for the claimants but also for the 15 per cent
6 expenses.

7 MR. HART: All I have admitted is that the checks
8 they have presented are authentic checks and they were paid
9 to Liberty Mutual. I have not admitted those checks
10 were made in response to claims validly coming under
11 Continental Casualty's policy.

12 THE COURT: Do you admit that they were paid
13 to claimants who asserted that vinyl-covered panels from
14 Continental Vinyl were sold by Champion International?
15 Do you admit that all these claimants asserted their
16 claims because the manufacturers of vinyl-covered plywood
17 panels purchased these panels from Champion International
18 became defective?

19 MR. HART: I think so. Would your Honor indulge
20 me and let me hear it once more? I think I do agree what
21 your Honor said is so, yes.

22 THE COURT: Do you say that Liberty Mutual, when
23 it made these payments to individual claimants, did so
24 because the claimants contended that they bought vehicles
25 which had in it delaminated panels which the manufacturers

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2 of the vehicles had purchased from Champion International?

3 MR. HART: Yes, I think I do. They did not buy,
4 of course, vehicles that already had delaminated panels
5 in them.

6 THE COURT: The panels became delaminated after
7 they made the purchase.

8 MR. HART: I think I respond to your Honor's
9 question by saying that we do not dispute that allegation
10 by the plaintiff --

11 THE COURT: Okay.

12 MR. HART: -- the plaintiff having told us that
13 is what those checks represent that Mr. Brown testified to
14 in his deposition.

15 THE COURT: Is there anything else, then?

16 MR. SHAINSWIT: Mr. Hart, is there any dispute
17 between us, in view of your present statement, that the
18 volume that was marked Exhibit 1 on Mr. Brown's deposition
19 constitutes the actual accounting records of Liberty Mutual
20 reflecting the payments that they made in settlement?
21 In one of your affidavits to Judge Solomon you indicated
22 that you were questioning the accuracy of accounting records
23 without a witness being there. So that there should be
24 no misapprehension, are we now in accord you are prepared
25 to accept this exhibit as an accounting record of Liberty

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Mutual and which will then speak for itself?

MR. HART: I address the Court, not my adversary.

As must be apparent, as we said from the beginning, we do not dispute the authenticity of anything presented. Now we have a book and the book is brought forward and we have had depositions and to this moment, your Honor, there is no place anywhere, a sworn statement by anybody, that this is what this book says and I know what's in it," and I am asked to admit it, and I represent a client and I must say to your Honor somebody should have told us this on the deposition. We are here before the Court.

THE COURT: Let me ask you a few things.

I have seen a number of checks which are attached as Exhibit A to requests for admissions. One of them is for \$225,000, another is for \$100,000, a third is for \$10,000, a fourth is for \$100,000, a fifth is for \$100,000, a sixth is for \$100,000, a seventh is for \$200,000, an eighth is for \$150,000, a ninth is for \$50,000, a tenth is for \$50,000, an eleventh is for \$50,000, the twelfth is for \$75,000, the thirteenth is for \$200,000, the fourteenth is for \$4992.73 and the last one is for \$4557.10.

Do you admit that these checks were issued by the plaintiff, Champion International, to the Liberty Mutual in connection with the payments made by Liberty

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2 Mutual to these various claimants and for expenses incurred
3 and fees charged by Liberty Mutual Insurance Company?

4 MR. HART: Your Honor, I think I admit that, but
5 I again want to make as clear as I can, your Honor, that
6 by admitting that I do not admit that there has been proof
7 that losses under the policy here involved are equated with
8 those notes.

9 THE COURT: In other words, you are not admitting
10 liability in this case but I, for example, having found
11 liability, can assess these damages as growing out of my
12 finding that it doesn't make any difference whether there
13 was one accident or a number of accidents that this policy
14 covers?

15 MR. HART: And if your Honor says it doesn't
16 make any difference when the delaminations take place in
17 addition to that, then I would think that your Honor has
18 said that whatever Champion paid to Liberty Mutual in con-
19 nection with alleged delamination of vehicles on the basis
20 of such other facts, I don't quite know what they are but
21 we don't know when the sales were made, we do have some
22 proof of when some of the vehicles were manufactured, but
23 if that's what your Honor holds, then it speaks for itself,
24 because we do not deny that they paid a million-six because
25 Mr. Brown so testified and we accept his testimony as being

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2 veracious.

3 But we do not agree that the fact that your Honor
4 held there was one occurrence requires the conclusion that
5 therefore all moneys paid for delaminated panels come within
6 the damage item.

7 THE COURT: So I make myself really clear, I
8 have already held that it doesn't make any difference
9 whether the delamination occurred within or outside the
10 policy period, that the real issue is whether the delamin-
11 ation was covered by the policy and maybe if Champion
12 International bought these things outside the policy period
13 and sold it outside the policy period and the delamination
14 took place as a result of this sale which occurred outside
15 the policy period, I don't think there would be any liability
16 on the part of Continental under those circumstances.

17 I don't want anything I say to be construed to
18 include those and you didn't think so, did you, Mr. Hart?

19 MR. HART: Your Honor, so far the way it comes
20 through to me is that your Honor, having found liability
21 based on what your Honor said was one occurrence, which was
22 the proximate cause of the delamination of the carious
23 vehicles, and the plaintiff having testified that the money
24 which we accept and do not dispute that they paid Liberty
25 Mutual's bills for handling delaminated panel damages in

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2 vehicles over a period of time, a million-six or whatever
3 those notes are, that there is nothing further to the case.

4 If your Honor holds that, then our contention is
5 that --

6 THE COURT: I didn't seem to appear to hold that
7 if Champion International bought the panels outside the
8 policy period and sold them to the manufacturers outside the
9 policy period and that the delaminations occurred outside
10 the policy period that Continental Casualty was liable for
11 it.

12 MR. HART: I understood your Honor to say all
13 of those items were immaterial to a determination of this
14 case.

15 THE COURT: I never said that at all.

16 MR. HART: Then I am sorry, your Honor. That is
17 exactly what concerned me.

18 THE COURT: Mr. Hart, are you of the opinion
19 that I said that if the policy expired on December 31, 1971,
20 and Champion International bought panels in 1972 and sold
21 them to manufacturers of vehicles in 1973 and the delamin-
22 ations occurred in 1974 that Continental Casualty would be
23 liable under those policies?

24 MR. HART: Your Honor did not say that, but
25 your Honor is assuming, as it appeared to me, that because

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2 the plaintiff has asserted without more that therefore the
3 sales referred to to the manufacturers of the vehicles all
4 took place within the policy period.

5 I have said repeatedly about that and about other
6 things that we have not given the plaintiff any difficulty,
7 raising all kinds of questions, wanting to examine all kinds
8 of people. All we have asked them to do is to give us
9 the record so that in representing my own client I could be
10 satisfied that they have established what appears to be very
11 simple proof. I expect they can do it. The thing I
12 don't understand is why they won't do it. Its easy
13 enough to do.

14 THE COURT: This is somewhat different than the
15 representations you made to me a few minutes ago, Mr. Hart.
16 We thought that there was no question that the panels were
17 purchased from Continental or someone else -- I thought from
18 Continental -- during the policy period, that they were sold
19 to the manufacturers of vehicles during the policy period
20 and that they were manufactured by the manufacturers of
21 vehicles either during or outside the policy limits and
22 that the delaminations took place as a result of these sales
23 which occurred during the policy period.

24 Do I make myself clear on that?

25 MR. HART: Yes, sir. I am very, very sorry that

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2 your Honor had that impression. I say with the deepest
3 deference that I do not believe the record will confirm that,
4 and my recollection is definitely to the contrary. At the
5 time your Honor came and took this case over were engaged
6 in putting together these very facts which had not been
7 submitted to us.

8 THE COURT: What is it you are agreeing to or not
9 agreeing to? I recall very well that you came to my
10 chambers and you told me that you had been taking depositions
11 for several months and you had about five or six more months
12 of depositions to take, and I listened to the facts and I
13 couldn't see any utility of that, I thought it was merely
14 a stall and I thought we ought to get down to business, and
15 we agreed to try the case on the issue of liability and
16 then at the time of the trial I thought that the issue of
17 damages had been abandoned and I think I complimented you,
18 both counsel, on your willingness to get together and get
19 rid of these irrelevancies.

20 Now today you have raised a number of points.
21 I asked you specifically what you are contending. You said
22 you thought they were immaterial, and I asked Mr. Shainswit
23 if he thought they were immaterial. At no time did I
24 think that these were for sales made outside of the policy
25 period.

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2 MR. HART: Your Honor, I am sorry to say that
3 with respect to what happened when we first appeared
4 before your Honor my recollection is distinctly to the
5 contrary to that of the Court.

6 Your Honor never said it appeared to you to be
7 a stall. There would have been absolutely no basis for
8 saying so. We were then before Judge Pollack.

9 THE COURT: You weren't before Judge Pollack
10 when you were before me.

11 MR. HART: No, your Honor.

12 THE COURT: You were talking to me about the
13 examination of records I believe in Boston, that you had to
14 go there.

15 MR. HART: Your Honor, no, no. As far as
16 Continental Casualty is concerned, I cannot make this too
17 strong. We never ever asked for an adjournment anywhere
18 for any reason. Mr. Shainswit was then engaged in
19 putting together facts. We said, and I say it now, I
20 have been saying it all day today, when the facts are
21 presented we are very likely not to raise any question
22 about the believability of the presentation.

23 THE COURT: Let me go back, then, and find out
24 what we are arguing about.

25 Are you contending that the sale of the vinyl

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panels by Champion International to the various manufacturers occurred outside the policy period? Are you contending that or are you admitting that these panels were sold during the policy period?

MR. HART: I am neither admitting nor denying it because they won't tell me and it is their records.

THE COURT: I am going to appoint a master for the purpose of determining that point.

MR. HART: Your Honor, if they tell me I will probably accept it. They never have told me.

THE COURT: Are you willing to tell him now?

MR. SHAINSWIT: I represent to you, Mr. Hart, that our office has reviewed all of the invoices and records. They were made continuously available to your office. Mr. Holland, your partner, was up there to make a spot-check --

THE COURT: Don't go into all these things. He wants to ask you if you represent --

MR. SHAINSWIT: I am affirming it as a fact. If you want to see it, if you have any lingering doubt, I will make available to you at whatever time all of the records that we have to establish that.

MR. HART: Your Honor --

MR. SHAINSWIT: I do want to urge --

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1
2 THE COURT: Why don't you --

3 MR. HART: I will take an affidavit from some-
4 body with knowledge of the fact, just so somebody says,
5 "I know this is so and this is what I swear to."

6 THE COURT: Who are you going to get to make
7 that affidavit?

8 Mr. Brown, are you in a position to make such
9 an affidavit?

10 MR. BROWN: Yes, I could make it on the
11 conversations.

12 THE COURT: I want you to make an examination
13 of the books and records.

14 MR. BROWN: We will do that, your Honor.

15 THE COURT: And make an examination of the
16 books and records.

17 MR. BROWN: We will do that, your Honor.

18 THE COURT: And make an examination and in
19 your affidavit set forth the books and records that you
20 have examined.

21 Would that be all right?

22 MR. HART: Sure, just so long as he say it on
23 his own knowledge.

24 MR. SHAINSWIT: May I say something that
25 may simplify it? We have sent to counsel in California

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2 these various books and records, and I believe in about
3 a 10-page letter we identify each of those books and
4 records. We have that letter here. Perhaps if I exhibit
5 it to you we can dispose of that issue now.

6 (Pause.)

7 THE COURT: Give it to Mr. Hart. I don't need
8 to see it.

9 (Mr. Shainswit hands document to Mr. Hart.)

10 MR. HART: May I, your Honor?

11 THE COURT: Yes, go ahead.

12 MR. HART: I have looked at this letter which
13 is dated June 26, 1975, and I understood from what Mr.
14 Shainswit said he was submitting it on the basis that it
15 would indicate the times when the sales to the manu-
16 facturers of vehicles were made. I don't think this
17 letter does anything like that.

18 THE COURT: Then you don't have to accept it.

19 MR. HART: I am perfectly willing for your
20 Honor to look at it with us, but it does not show the times.

21 THE COURT: Let me see the letter.

22 I want to say this, that I have read my opinion
23 and I have concluded that the source of the vinyl-covered
24 plywood panels, which was part of my holding on the issue
25 of liability, were purchased from Continental. If there

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2 is an issue on whether these vinyl panels were purchased
3 from Continental or from some other company, I think that
4 ought to be established. This is the first time I have
5 heard there was any controversy over the source, but I
6 think my determination on the issue of liability is dependent
7 to some extent on that. I don't think there could be one
8 occurrence if they bought the delaminated panels from 16
9 different outfits.

10 Mr. Shainswit, you had better check your
11 records and see whether there is evidence to support that
12 contention or, I thought, stipulation or admission, but
13 if I am wrong on that, you had better put in evidence
14 showing that all of these panels came from Continental.

14

15 MR. SHAINSWIT: We had thought in view of the
16 position Mr. Hart had taken on the issue of liability
17 that that was outside the case.

18 Your Honor directed Mr. Hart at the first pre-
19 trial conference in the first brief to indicate what were
20 the issues that he was contending for on the issue of
21 liability, to identify the testimony and the evidence he
22 was proffering on that issue, and that there would be only
23 one trial on that issue, and in his briefs he made the
24 concession that Continental Vinyl was the source --

25

THE COURT: I am not going to read that now.

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2 You check it.

3 MR. SHAINSWIT: -- in the same fashion that we
4 had indicated to Mr. Hart --

5 THE COURT: I want to say to you I am going to
6 give you two weeks within which to furnish Mr. Hart evidence
7 of the source of all these orders from Continental Vinyl,
8 and if it was purchased elsewhere I want you to show what
9 portion was purchased from Continental and what portion
10 from other companies; and I also think that as long as
11 you are doing that you can include the date upon which
12 those purchases were made from Continental or from these
13 other manufacturers and if there is any -- I don't think
14 that the date upon which they were sold by Champion to
15 the manufacturers of the vehicles is that important, but
16 you had better give him that information also in each one
17 of those companies, and that as far as the dates of
18 manufacture by the manufacturers of the vehicles, I am not
19 going to ask you to submit that or the dates when the
20 delaminations took place. But the first three I think
21 you had better supply.

22 You had better wire Los Angeles and get all
23 that information here and give it to Mr. Hart. If Mr.
24 Hart is dissatisfied with the information, I want you to
25 send the information to me and if I think that it is

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2 sufficient and if Mr. Hart makes an objection to it, I
3 will pass upon those objections. If it is necessary, I
4 will send it to a master to take further evidence.

5 MR. SHAINSWIT: In view of your Honor's
6 ruling, I take it it is not necessary now to prepare an
7 affidavit because we will be giving him the documentation
8 itself.

9 THE COURT: That's right. I think it would
10 be better.

11 Isn't that your understanding, Mr. Hart?

12 MR. HART: Yes, sir.

13 THE COURT: You give him Xerox copies of the
14 documentation.

15 MR. SHAINSWIT: Your Honor, these are
16 thousands.

17 THE COURT: Mr. Shainswit, you mean to say
18 there are thousands of documents to show where Continental --
19 the dates on which these sales were made?

20 MR. SHAINSWIT: Yes.

21 THE COURT: What is this young man's name --
22 Holland?

23 MR. HOLLAND: Yes, sir.

24 THE COURT: You go to their office on a date
25 certain and you take a look at all those documents and then

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1 if you don't think that the documents are adequate, you
2 set out in writing the basis upon which you regard the
3 documents to be deficient.
4

5 Is that okay, Mr. Hart?

6 MR. HART: Yes, sir. There is only one
7 thing, that somebody at Mr. Shainswit's office be present
8 to identify what we are looking at.

9 THE COURT: I think some of the same documents
10 will also determine the dates upon which these items were
11 purchased.

12 MR. HART: It would be just fine if they
13 schedule what the information is, but that's up to them.

14 THE COURT: You send him over there.

15 MR. HART: Shall we fix a date?

16 THE COURT: Let me give you a date. I think it
17 ought to be at least two weeks. Today is the 29th.
18 How about the 14th of October? That's two weeks and a
19 day.

20 MR. SHAINSWIT: For the production for his
21 inspection?

22 THE COURT: At your office with someone from
23 your office there to explain to Mr. Holland what you have
24 there. If, for example, you are not able to get it by
25 that time, I want you to give him at least three days

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notice and we will postpone it for one week.

MR. SHAINSWIT: The only other suggestion I might have, your Honor, to expedite it is whether Mr. Holland and Mr. Hart would be willing to have any representative join a representative of our office and go to California to inspect these things. These things have been shipped back and forth.

THE COURT: I think it can be shipped.

MR. SHAINSWIT: I have no objection.

THE COURT: So there won't be any mistake, one, the source of the delaminations, if it comes from anyone else than Continental we want to know about that; second, the dates upon which these purchases were made; and third, when were the sales made to the manufacturers of the vehicles. Those three items.

Let Mr. Holland take a look at them and if he is not satisfied, I want to know the basis for it and then if I think that you have adequately proven it I will send it out to a master.

What else is there for us to decide?

MR. HART: Your Honor, today we heard and your Honor heard Mr. Shainswit making a statement which constituted in substance to be along the following line namely, in presenting this case before this Court under

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2 the Continental Casualty policy, if I follow him, all he
3 need do is prove that the damages incurred and expenses
4 incurred by Champion exceeded a million dollars. That
5 means the limit of coverage.

6 I will agree that that is a fair statement,
7 he does not have to prove more than a million to recover
8 a million. On the other hand, we have those checks
9 to which your Honor is referring, the authenticity of which
10 we have not disputed, which add up to about a million-six.

11 Mr. Shainswit, it would seem to me, has in
12 mind showing to this Court that within our policy period,
13 and so on, there was at least a million dollars in damages
14 that were incurred. I don't quite have in mind what
15 he has in mind, and the next time we come back I would
16 certainly like to avoid --

17 THE COURT: I don't agree with him at all, and
18 the reason for it is this, that if -- unless he is willing
19 to stipulate that when he gets his million dollars on a
20 subrogation from the other company you are entitled to all
21 the rest of it, because if he is going to claim a million-
22 six he has got to show that he has incurred a million-six
23 and that you wouldn't be entitled to recover your million
24 dollars until after he got his million-six. So I didn't
25 pay any attention to that statement.

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15 2 MR. HART: Your Honor's statement as to the
3 subrogation is of course correct.

4 THE COURT: He is going to have to prove that,
5 the million-six, because otherwise when a million dollars
6 has been obtained you would be entitled to share it.

7 MR. HART: Yes, your Honor.

8 THE COURT: Let me find out something else.

9 You are contending for interest, aren't you,
10 from the date of payment?

11 MR. SHAINSWIT: Yes, since that seems to be
12 the reasonable intermediate date.

13 THE COURT: Are you denying that if the
14 plaintiff is entitled to recover a million dollars that
15 they are entitled to recover interest also? If so, are
16 they entitled to recover it on the basis of 6 per cent,
17 or whatever the figure is, or 7-1/2 per cent after
18 judgment?

19 MR. HART: I believe I will take the second
20 question first, that the interest rate in this area is
21 6 per cent.

22 THE COURT: Wasn't there a New York law which
23 said after judgment you get 7-1/2 per cent?

24 MR. HART: What I believe happens, I think I can
25 clarify that for your Honor, what I believe happens is this:

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2 the Federal Court at all times follows the State Court.
3 The problem was the legal rate of interest as established
4 by the statute, the legal rate being what banks charge.
5 As the banking law, as I understand it, of the State was
6 amended to permit higher rates than 6 per cent, the New York
7 laws began to hold that the interest allowable on a judg-
8 ment would be the same as the legal rate of interest
9 permissible under our banking law.

10 That was the situation for several years, and
11 then our Legislature three or four years ago passed a
12 special statute that with respect to judgments the interest
13 on a judgment will be 6 per cent.

14 THE COURT: Okay.

15 MR. HART: That is what I understand.

16 THE COURT: Let me ask another couple questions.

17 Under New York law, does the insured who files
18 against the insurance company get attorney fees in addition
19 to the amount of recovery?

20 MR. HART: No, sir.

21 THE COURT: There is such a law in Oregon.
22 I just wanted to know.

23 Do you agree on that?

24 MR. SHAINSWIT: If the Court makes a finding
25 that the disclaimer was in bad faith --

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2 THE COURT: I am not going to make that.

3 MR. SHAINSWIT: Then I would agree only under
4 that exceptional circumstance would there be --

5 THE COURT: I am not going to do that.

6 MR. SHAINSWIT: I want to correct one statement
7 on the interest. I think Mr. Hart upon reflection may
8 agree with me.

9 During the limited period between February 16,
10 1969, and August 31, 1972, when interest was computed
11 at the rate of 7-1/2 per cent per year, that if your Honor
12 were to compute interest here during that specific narrow
13 period, it would be 7-1/2 per cent and then it reverts to
14 6 per cent.

15 THE COURT: Is that correct, Mr. Hart?

16 MR. SHAINSWIT: We set that forth, Mr. Hart,
17 in the affidavit that we submitted.

18 THE COURT: I thought you have to have a
19 judgment. Isn't that the rule?

20 MR. SHAINSWIT: Under the CPLR you first compute
21 interest up to the date of verdict or decision, and in
22 computing that interest you are entitled to 7-1/2 per cent.

23 THE COURT: Give me that citation on that.

24 MR. TEICHER: There is a citation in the
25 affidavit.

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2 THE COURT: I didn't look at Mr. Shainswit's
3 judgment very hard because I thought it was a little
4 premature for me to be worrying about a judgment before
5 I found out the amount or whether you were entitled to a
6 judgment.

7 MR. TEICHER: Computing interest is a science
8 lawyers and judges aren't too familiar with.

9 After I researched these cases I called the
10 Clerk of this Court and he confirmed what I said about
11 that 7-1/2 per cent for a limited period of time.

12 To double check it, I called the Clerk of New
13 York County who figures out interest rates for the State
14 Courts, and he also confirmed it.

15 THE COURT: Assuming that he can supply this
16 information, then the plaintiff would be entitled to a
17 judgment, according to my theory.

18 Do you want to take a look at his proposed
19 judgment to see whether it conforms to your idea as to the
20 form of the judgment? I know you think the judgment is
21 wrong. I am not asking you about that. I am just
22 talking about the form of the judgment. Or have you done
23 so already?

24 MR. HART: We have not done so, your Honor.
25 I speak plainly from ignorance, but I have a feeling that

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2 in this court, except perhaps in complex equity cases,
3 there being a money judgment, the Clerk enters it. I might
4 be wrong about that.

5 THE COURT: The Clerk does enter it, but he
6 couldn't enter it on the basis of my opinion alone because
7 subsequently we are having a hearing on the issue of
8 damages. I will have to issue another opinion, and the
9 probabilities are that the Clerk will issue the judgment
10 but the Clerk is not always correct and sometimes it's
11 better if the parties can agree upon the form of the
12 judgment.

13 What about costs? What are you going to ask
14 for in the line of costs? We ought to determine those
15 things now.

16 MR. SHAINSWIT: Subject to whatever ruling
17 your Honor makes in connection with attorney's fees or
18 costs --

19 THE COURT: I am denying attorney's fees.

20 MR. SHAINSWIT: In connection with the refusal
21 to admit certain facts so that we have that open, in terms
22 of traditional costs I would think that the only item of
23 cost that we have is the cost of taking the five
24 depositions that were put into evidence.

25 THE COURT: Five depositions on what issue?

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2 MR. SHAINSWIT: That was on the issue of
3 liability, your Honor.

4 THE COURT: Do they permit the discovery
5 depositions to be taxable as costs? I thought that some-
6 times they will permit de bene esse depositions as an item
7 of taxable cost but not depositions taken for discovery
8 except in the instance of bad faith.

9 Now, the New York rule may be different, but
10 that is the rule I have been following.

11 MR. SHAINSWIT: These were depositions of trial
12 witnesses, your Honor. These depositions were received
13 in evidence at the trial on the issue of liability.

14 MR. HART: Your Honor may have not quite the
15 right picture in view of this statement.

16 Early in the case, when it was apparent that
17 there would have to be depositions taken of some of the
18 manufacturers of vehicles such as Nauta-Line and Cobra, the
19 plaintiff's attorneys asked us, in order to avoid the
20 expense that would be involved in going out to where the
21 manufacturers were or bringing them to New York, that we
22 agree with them on forms of questions to be submitted to
23 these manufacturers to be answered in lieu of our taking
24 personal depositions.

25 We agreed to that. We agreed on questions

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2 to be put to them. Neither Mr. Shainswit's office nor
3 my office went out of New York. And then their answers
4 were put down in writing and sent back to New York and
5 the depositions which he referred to that were submitted
6 to your Honor were those written interrogatories that were
7 sent out to the manufacturers and which they answered in
8 writing. It was not a big involvement is what I am
9 getting at.

10 MR. SHAINSWIT: I will waive the subject
11 because I think we are both spending our clients' time.

12 THE COURT: Those answers to interrogatories,
13 wouldn't they tell when the delaminations occurred and when
14 the purchases were made and things of that kind?

15 MR. SHAINSWIT: They would identify the units
16 that were involved in the claim.

17 THE COURT: You might have a lot of that
18 information.

19 MR. SHAINSWIT: We have some of that inform-
20 ation right there, of course.

21 THE COURT: Let me see whether I can make a
22 deal here. Let me say I think that you are going to be
23 able to probably establish one, two and three and I
24 believe probably Mr. Hart thinks so, too. Suppose
25 Mr. Hart would say, "I will agree to that." Would you

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2 be willing to agree that the bond for the appeal could be
3 \$100,000 instead of \$1,300,000. or whatever it is?

4 Are you satisfied with the financial security of Continental
5 Casualty?

6 MR. SHAINSWIT: Your Honor, I would assume so,
7 but, as Mr. Brown indicates, subject to our checking with
8 the financial people at Champion, on the surface it is a
9 sensible suggestion.

10 THE COURT: He would have to put up a million
11 and a half worth of securities, probably, which might be
12 a substantial burden to him, and I don't know whether
13 one company has to pay another company's premiums for
14 \$1,500,000 or something like that. Here if you are
15 satisfied you might save them \$50,000 or \$100,000.

16 MR. SHAINSWIT: I think I would rather say
17 that is totally acceptable to me unless I advise Mr. Hart
18 to the contrary.

19 THE COURT: What do you think of that, Mr.
20 Hart? Do you want to take a recess for about 15 minutes
21 and talk it over?

22 MR. HART: I would appreciate that, your Honor.
23 Before your Honor leaves, may I make another
24 observation for consideration by the Court?

25 When we appeared before the Court the last time,

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2 both sides submitted documents and depositions to the
3 Court. Their authenticity, their authenticity, their
4 admissibility, the right of the Court to consider them is
5 not in dispute, but they were not marked as exhibits at the
6 trial and I would request, respectfully, that we get around
7 at some convenient time to marking them.

8 THE COURT: You can do it today. You don't
9 have a problem with me. I am not that technical, and I
10 don't recall that they weren't marked, but if they weren't
11 marked that is no problem at all, Mr. Hart, you just mark
12 them and they are admitted.

13 Let's take about a 15-minute recess.

14 (Recess.)

15 THE COURT: What did you find out?

16 MR. HART: Of course, I represent a company,
17 but the personal client I spoke with is the lawyer himself.

18 I described to him as well as I could what
19 your Honor had suggested. He would like until tomorrow
20 to make a determination about that.

21 On my own behalf, it occurred to me that
22 assuming that we could proceed along the lines your Honor
23 has indicated, which I hope we will be able to do, that it
24 might be helpful if your Honor, for example, put this
25 over until Wednesday and gave Mr. Shainswit and us a

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2 chance to put down in writing what it is we are stipulating
3 with one another. We could then submit it to the Court
4 and it could be put in the record that way, thereby, I think,
5 perhaps clarifying what it is we are doing.

6 THE COURT: I didn't think there was any
7 dispute about what you were doing. I understood you would
8 stipulate that Champion International purchased all these
9 panels from Continental and that they were purchased
10 during the policy period and that they made the sales to
11 the manufacturers of the vehicles during the same policy
12 period.

13 Those are the only three things that we talked
14 about. As far as when the the delaminations took place,
15 there would be no stipulations on that, nor the dates upon
16 which these vehicles were manufactured with the panels.
17 There are no stipulations on those two items.

18 MR. HART: I understood it just that way, your
19 Honor.

20 When your Honor said there would be no stipula-
21 tions about the last two items, I take that to mean your
22 Honor was ruling they are not material to the determin-
23 ation of this case.

24 THE COURT: Yes, that's what I intended.

25 MR. HART: I think that's a very clear state-

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ment, your Honor, and I will agree that we do not need a written stipulation between counsel. It seems to me to be just what your Honor said and is just what I understand.

THE COURT: That would mean there would be a judgment entered but there would be a stay granted upon the posting of a \$100,000 surety bond or \$100,000 securities, whatever is your choice.

Would that be all right, if they deposited securities?

MR. SHAINSWIT: Yes.

THE COURT: Now, there is practically no transcript in this case, and the transcript today is not going to be of any use in connection with the appeal on the issue of liability because I already determined liability.

I don't know what the point is on damages now. I don't think there ought to be undue delay in getting your appeal perfected and your briefs in, and I understood that that was your view, too, that you wanted to proceed promptly without any delay.

MR. HART: That is correct, your Honor.

THE COURT: I think Mr. Shainswit has indicated the same thing. Therefore, I don't think you ought to get any extensions of time within which to file your notice

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2 of appeal.

3 Would you let me know on Wednesday? You can
4 call my office in Portland.

5 MR. HART: Yes, I will let you know on
6 Wednesday.

7 THE COURT: If this agreement is not executed
8 or it doesn't go through, then two weeks from tomorrow --

9 MR. SHAINSWIT: Would you make it two weeks
10 from Wednesday? I have to call California.

11 THE COURT: Two weeks from Thursday in
12 Mr. Shainswit's office he will produce these documents
13 covered by the tentative stipulation, and Mr. Holland will
14 go to the office and then they will look at the various
15 documents.

16 MR. HART: May I ask one other thing, your
17 Honor?

18 THE COURT: Go ahead.

19 MR. HART: There was a reference made during
20 this morning to Continental Casualty's relationship to
21 the subrogation right in California, and I thought your
22 Honor had said that you would include that in your
23 findings.

24 THE COURT: I would be glad to do that.
25 And I say that when I enter a judgment, I don't know if it

1 gws

2 would have to be done in the judgment itself, I don't
3 think so, but I will have a finding which I think would
4 be legally binding on Champion International that if at
5 any time the plaintiffs are successful in the litigation
6 which they are now pursuing in California against the
7 manufacturers of the panels --

8 MR. HART: They are suing three defendants,
9 your Honor, National Starch, which is a big company which
10 I understand sold the glue for the paneling; the Mead
11 Corporation, another large company, which sold some part
12 of the components of the panel, perhaps the vinyl covering;
13 and thirdly, the insurance company of the defunct Continental
14 Vinyl itself.

15 So you have three defendants there, and I
16 understand, but I am not sure about this, that they are
17 either all in one lawsuit or that suits are being
18 consolidated for trial. I am sure Mr. Brown can help
19 the Court. I think he knows.

20 THE COURT: In connection with that litigation,
21 the defendant is entitled to subrogation against these
22 companies to the extent of the amount which it may be
23 required to pay Champion International as soon as Champion
24 International has obtained from Continental Casualty.
25 and from these other companies the loss which it has

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2 sustained, the \$1,600,000 plus interest.

3 Now, I don't know whether under the law they
4 would be entitled to deduct the attorney fees and costs in
5 connection with that case, but I am not going to pass on
6 that. That would be left open. But to the extent of
7 Continental Casualty's payment, they would be entitled
8 to subrogation, and I think also if this amount is paid,
9 that counsel for Continental Casualty should have some
10 rights in connection with the prosecution of the litigation
11 in California.

12 Does that satisfy you?

13 MR. HART: Yes, I think that was a very fair
14 statement of the situation.

15 MR. SHAINSWIT: I will assume, your Honor,
16 that your statement is qualified to the point that if
17 the recovery in California is for losses which are
18 covered under the policy there would be subrogation.
19 It would depend on what the recovery is in California
20 and on what basis. I don't think your Honor has to pass
21 upon that.

22 THE COURT: I think that is true, but I am
23 not going to pass on that issue. If it has something
24 to do as to something altogether different, obviously they
25 are not entitled to the recovery.

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2 All right. Let me know. You know my
3 address, you know my telephone number, I believe, and I
4 will give it to you. Area Code 503-221-2151.

5 MR. SHAINSWIT: May I take five minutes, so
6 as to avoid any possibility of dispute, to indicate the
7 matter that I think should be marked in evidence?
8 If there is any objection your Honor can pass on it
9 immediately.

10 THE COURT: All right.

11 I think Mr. Hart would like to have certain
12 other things marked in evidence also.

13 MR. HART: Yes, sir.

14 MR. SHAINSWIT: I would ask there be marked in
15 evidence the accounting reports from the Liberty Mutual
16 which were marked as Exhibit 1 on the Brown deposition.

17 MR. HART: Your Honor, I will not object if
18 somebody will say what it is and where it comes from,
19 not the lawyer, somebody who knows. Then it may be
20 marked and I won't have any objection.

21 THE COURT: This man who has testified
22 before. Take a look at that and tell Mr. Hart where it
23 came from and what it is.

24 MR. HART: Do you want him there?

25 THE COURT: Suppose you sit there.

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2 F R E D G. M A S O N , resumed.

3 BY THE COURT:

4 Q What is it?

5 A It is a report that was submitted on a monthly
6 basis or about every six weeks to U. S. Plywood to the
7 attention of Mr. Wynne, to the attention of Liberty Mutual
8 and our home office finance department, that accounted
9 for the payments for both lost payments on individual units
10 and also for allocated expenses in connection with the
11 inspection of the individual units and the 15 per cent
12 unallocated expense.

13 BY MR. HART:

14 Q Where did the information come from that
15 formed the basis for the scheduling contained in this
16 book?

17 A The information came from our claims files
18 which were kept in New York City in either my office or,
19 when I left, in Mr. Foster's office.

18 20 Q Are those the same claim files that were
21 produced here and placed on the table earlier today that
22 I am pointing to?

23 A That is correct, except the front of the folders
24 are not there. The material there is collated material
25 that was prepared by Mr. Foster and his group of people

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Mason -

2 after I left New York and then subsequently came back.

3 Q Who prepared this black book?

4 A I did not. I do not know.

5 Q Do you know who did?

6 A No, I do not personally know.

7 Q Then how do you know that they were relying
8 on the records we are looking at on this table in preparing
9 that book?

10 A Because the format used is the format I
11 prepared and this is a photostatic copy or a Xerox copy
12 of the reports that I submitted to U. S. Plywood.

13 Q Have you yourself examined the contents of that
14 black book?

15 A I have previously, yes.

16 Q Previously. How recently?

17 A Maybe five or six months ago, maybe a little
18 bit longer than that.

19 Q Did you make any comparisons between what's in
20 that book and what's in the records?

21 A Yes, I did.

22 Q How did you do that, spot-check it?

23 A That's right.

24 Q What do these schedules show now? I see they
25 have tabs with dates on them.

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Mason -

1 A They have tabs with dates to show the dates
2
3 that they run from and to. In other words, they
4 weren't prepared on a monthly basis. They were prepared
5 on about a six weeks or two-month basis we felt we had
6 used what money we had in escrow.

7 Q Have you finished?

8 A Yes.

9 Q Do the dates on the tabs reflect the times
10 when payments were made?

11 A Yes.

12 Q And reflects nothing else?

13 A Yes, this reflects the file number, such as
14 the manufacturer's name, the people to whom the money was
15 paid, our check number, the date of the check issued
16 and the amount of money, and also in here you will find
17 unallocated expense, a similar tabulation, the payee's
18 name, such as Crawford & Company, the check number, the
19 date issued and the amount.

20 Q Mr. Mason, as I look at one of the tabs here,
21 the dates that are given on one of the tabs is August 13,
22 1971, to October 11, 1971. Do you see that?

23 A That's ritht.

24 Q That's the time when the payments were made?

25 A That's right.

gws

Mason -

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2 MR. HART: May I address the Court?

3 THE COURT: Certainly.

4 MR. HART: I think the Continental Casualty
5 policy period was November 30, 1967, to November 30, 1970,
6 and then there was an extension of a couple of months,
7 and these dates that we are looking at, there are several
8 tabs here which show that the payments that were made --
9 it't not all of them but a very large number of them --
10 were made after that period, and I would ask the witness
11 now how would we be able to check out that with respect
12 to those payments that were made in 1971 and 1972 and
13 some in 1973 and some in 1974 that they relate to the
14 delaminations of plywood panels that, as you heard here,
15 are alleged to have been bought from Continental Vinyl
16 and some during Continental Casualty's policy period?

17 MR. SHAINSWIT: Your Honor, I object to that
18 question. It asked the witness to give a legal inter-
19 pretation.

20 THE COURT: You are the one that wanted to
21 simplify things by putting in this wholly useless book.
22 You brought it on yourself. You have been doing this
23 all along. There is no use for something and you come in
24 and want to simplify it and then you get yourself in a
25 lot of trouble and then you complain.

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Mason -

2 The date upon which the payment was made is
3 totally unimportant in this case. I have also ruled that
4 the date upon which the delamination took place is also
5 useless. I don't know why you put this in where there is
6 an agreement by Mr. Hart that the checks were given for
7 this other purpose and when he is going to stipulate in the
8 next few days, probably, that all of the panels were bought
9 from Continental during the policy period and they were
10 sold during the policy period.

11 What are you doing here? I am going to recess
12 until two o'clock. You come back at that time. Then
13 you can do anything you want to do.

14 (Luncheon recess.)

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AFTERNOON SESSION

(2.00 p.m.)

THE COURT: The Court is in session.

Go ahead, Mr. Hart. You were making an objection when I took a recess.

MR. HART: There was a witness on the stand and a book had been offered in evidence and I was interrogating on the voir dire. I think I had a question to which there was an objection by Mr. Shainswit at the time we took the recess.

THE COURT: I remember. I don't know the purpose of all this. In view of the stipulations that were made, I can't see that any useful purpose is being served either by the offer or by the objection.

MR. SHAINSWIT: I withdraw the offer, your Honor.

THE COURT: He has withdrawn the offer.

MR. SHAINSWIT: I have nothing further to offer. I will proceed in conformity with your Honor's rulings this morning.

THE COURT: Mr. Hart, do you want to offer some exhibits?

MR. HART: I think, your Honor, I do not have any additional evidence to introduce nor do I have any

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2 requests that we mark any documents not previously sub-
3 mitted to the Court. I do have a request that we mark
4 in evidence either as Court's exhibits or plaintiff's
5 exhibits or as defendant's exhibits documents which were
6 submitted to the Court.

7 THE COURT: I understood that. I said to go
8 ahead and do it. You don't have to give any more
9 explanation. I understood this is what you wanted
10 to do.

11 MR. HART: May I ask the Court a question?

12 THE COURT: Yes.

13 MR. HART: Did the Court send to the Clerk
14 any of the documents we submitted on the first hearing on
15 liability?

16 THE COURT: I want to tell you something,
17 Mr. Hart. If I didn't, it will be done. I will ask
18 the clerk to mark them.

19 MR. HART: That would be fine. Then, if your
20 Honor please, they can all be marked as Court exhibits.
21 I have no objection to that.

22 THE COURT: That is perfectly all right.
23 I want everyone to have any exhibit they want in evidence
24 introduced. Even as far as this exhibit of Mr. Shainswit
25 is concerned, I think it's wholly useless, but if he wants

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2 it introduced I will overrule the objection and admit it.
3 That's the way I believe a case should be tried. Let the
4 Court of Appeals make all the determinations on that.

5 MR. SHAINSWIT: May I suggest the underlying
6 Liberty Mutual files that were brought here and the data
7 compilation sheets be deemed exhibits and I will be
8 responsible for their safekeeping so I don't clutter up
9 the Court record?

10 THE COURT: I think that might be against the
11 rules of the Court. If you admit something in evidence
12 it has to remain with the Court.

13 MR. SHAINSWIT: Except they may be needed in
14 related litigation. If we can deem it marked.

15 THE COURT: What good will it do you?

16 MR. SHAINSWIT: I don't know for the purposes
17 of the record in connection with any issue that may be
18 raised whether either side may want to refer to the claim
19 folders, and I think they ought to be in evidence for
20 whatever they are worth.

21 THE COURT: Claim folders for what purpose?

22 MR. SHAINSWIT: I don't know what issues he
23 will raise on an appeal, Judge.

24 THE COURT: Maybe I had better go back and tell
25 you what's happened in this case.

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2 MR. SHAINSWIT: To cut it short, perhaps,
3 since we have --

4 THE COURT: Every time you tell you will cut
5 something short it takes me an hour and a half to unravel it.

6 MR. SHAINSWIT: I am trying to make a practical
7 suggestion. We have all of these claim folders, we have
8 data compilation sheets which summarize them. Why don't
9 we put the data compilation sheets in evidence, which can
10 be easily put into the Court file.

11 THE COURT: On what issue?

12 MR. SHAINSWIT: I don't know on what issue,
13 Judge, except that they confirm or reconfirm the accuracy
14 of documents that may be later challenged by Mr. Hart.
15 If your Honor prefers, I will withdraw it. I don't want
16 to generate unnecessary colloquy. I was just responding
17 to your Honor's suggestion where your Honor had initially
18 said that whatever each side wanted to have received in
19 evidence would be received. Mr. Hart had taken a
20 position that he wanted at this hearing the data compilation
21 sheets in court. I have brought them to court. Having
22 taken a position in an affidavit that they should be
23 brought in court, I don't want later to be met with some
24 argument on appeal that having asked that they be in
25 court that I didn't produce them in court and have them

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2 marked.

3 THE COURT: Mr. Shainswit, at the commencement
4 of this hearing I announced that we were not going to
5 retry the liability issue. Then after a considerable
6 amount of colloquy and also the testimony of a witness, I
7 made a suggestion to Mr. Hart that in return for an
8 advantage which was obviously received by Continental
9 Casualty he would admit those things which I thought that
10 you could prove, namely, that the source of the delaminated
11 was Continental and that the purchases were made from the
12 manufacturers by Champion during the period in question
13 and that Champion made those sales to the vehicle manu-
14 facturers also during the period in question.

15 At another time Mr. Hart agreed that the checks
16 were authentic, \$1,600,000, and they were paid to Liberty
17 Mutual in connection with the settlement of the claims
18 that were made by claimants who asserted that they had
19 claims by reason of the delamination.

20 Why you find it necessary to put in each of
21 these items now showing what Continental did and the names
22 of each of the claimants is beyond me, because I am
23 satisfied that Champion International may do foolish
24 things during the course of their operations but they are
25 not going to pay out \$1,600,000 either to Liberty Mutual

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2 or to anyone unless it was in connection with some
3 liability that they felt that they owed.

4 Now, Mr. Hart told us that he was going to let
5 us know by Wednesday. v don't you leave it go at that.
6 If you want to at some later time put in this evidence, I
7 will consider it.

8 Mr. Hart's position is altogether different.
9 Mr. Hart wants to perfect his record in connection with the
10 liability issue. These are things that were tendered
11 during the trial, but he is fearful that they weren't
12 admitted in evidence so he can't use them in his argument
13 before the Court of Appeals.

14 Am I correct?

15 MR. HART: Yes, sir.

16 THE COURT: So he is in a little different
17 position than you are, and I told him he had the privilege
18 of putting them in and I would be glad to admit them in
19 evidence.

20 Is there anything else?

21 MR. HART: In general, since your Honor has
22 said whatever you have here has gone to the clerk, I would
23 ask if they can all be marked as Court exhibits since
24 both the plaintiff and the defendant jointly submitted
25 them to the Court.

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2 For example, before the Court is the policy
3 itself on which the claimants claim. Both parties agree
4 it is authentic. I don't know whether it was their
5 copy or our copy.

6 THE COURT: I don't care. Obviously all the
7 policies are admitted.

8 MR. HART: Let's give them a designation.

9 THE COURT: Court Exhibit 1.

10 MR. HART: I accept that.

11 (Court Exhibit 1 marked.)

xx 12 MR. HART: Then there was submitted to the
13 Court comprehensive general liability policy issued to
14 Champion by Liberty Mutual.

15 THE COURT: That's admitted also. 2.

16 (Court Exhibit 2 marked.)

xx 17 MR. HART: For the period October 31, 1967, to
18 November 1, 1968.

19 Then we submitted to the Court comprehensive
20 general liability policy submitted by Champion to Liberty
21 Mutual for the period October 31, 1965, to October 31,
22 1966.

23 THE COURT: Exhibit 2-A.

24 (Court Exhibit 2-A marked.)

25 THE COURT: Is it stipulated the reporter can

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2 have these marked Items 1 to 9, inclusive, and they are
3 admitted in evidence?

4 MR. SHAINSWIT: May I look at it?

5 THE COURT: I think there should be something
6 else admitted in evidence, and that is the answers to the
7 interrogatories from the individual manufacturers.

8 The five depositions filed with the Court.

9 Is that stipulated, Mr. Hart?

10 MR. HART: Sure.

11 MR. SHAINSWIT: They are five depositions on
12 file with the Court. We requisitioned them this
13 morning.

14 MR. HART: It is stipulated.

15 MR. SHAINSWIT: I also believe there should
16 be in evidence the responses that the plaintiff made to
17 the interrogatories that were propounded because you
18 referred to them.

19 THE COURT: I didn't understand.

20 MR. SHAINSWIT: At the trial on the issue of
21 liability, Mr. Hart under separate cover to the Court
22 had filed a copy of plaintiff's responses to the inter-
23 rogatories that had been propounded by defendant in
24 discovery proceedings but he had omitted the appendices,
25 without any criticism intended.

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2 We filed with the Court on the issue of
3 liability the complete responses with the appendices.

4 I have no objection to admitting the transcript
5 of the responses as long as it is understood that the
6 appendices are included.

7 MR. HART: It is so understood.

8 MR. SHAINSWIT: Fine. Thank you.

9 I also believe that there should be filed as a
10 Court exhibit the two Liberty Mutual policies that we had
11 handed up to the Court on the issue of liability which
12 covered the period of '68, '69 --

13 THE COURT: He has offered them.

14 MR. SHAINSWIT: He has offered the one from
15 '67 to '68. I don't want any confusion.

16 MR. HART: We have no objection. Is Mr.
17 Shainswit saying those policies are now before the Court?

18 MR. SHAINSWIT: I filed them on the issue of
19 liability. I assume they are before the Court.

20 MR. HART: I have no objection to their being
21 marked. I wanted to be sure they are here so we have
22 something --

23 THE COURT: They are marked admitted. I have
24 also said the policies are important but the fact Liberty
25 Mutual deposited \$100,000 I didn't consider on the issue

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2 of liability.

3 MR. HART: That's in your opinion?

4 THE COURT: Yes. I figured that might have
5 been a policy decision.

6 MR. SHAINSWIT: I have no objection to the
7 material pointed out.

8 THE COURT: Is that all?

9 MR. HART: Yes, sir.

10 THE COURT: Now, Mr. Shainswit, what else do
11 you want, if anything?

12 MR. SHAINSWIT: I just want to clarify one
13 thing.

14 There was a deposition taken of Steve Brown
15 referred to today. Is that something you want before
16 the Court or not? I have no objection either way.
17 You call the shot on that. Otherwise I have nothing
18 else, your Honor.

19 MR. HART: Your Honor, if I understand Mr.
20 Shainswit, he is not offering the deposition in evidence.
21 That being so, I am not offering it either.

22 THE COURT: All right. He thought maybe he
23 would talk you into offering it, that's all.

24 MR. SHAINSWIT: I have concluded, your Honor.

25 THE COURT: Somebody is going to call me

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2 Wednesday and then if the stipulation is entered into a
3 judgment will be entered. I hope that the parties can
4 agree on the terms of the judgment. If they can't, then
5 send the document out to me together with a letter from Mr.
6 Shainswit why he thinks the judgment ought to be entered
7 in the form he suggests, and you, Mr. Hart, tell me why you
8 don't think the judgment should be entered in that way.

9 If the stipulation is entered into, there will
10 be a provision that there will be a stay of execution upon
11 the depositing of \$100,000 either in securities or a
12 surety bond. The judgment will be without costs.

13 Is that correct, there will be no costs?
14 The costs other than the depositions are \$15 and \$10, which
15 is ridiculous.

16 MR. SHAINSWIT: We won't waste the time.

17 THE COURT: It is also understood that as soon
18 as the judgment is entered Mr. Hart will proceed promptly
19 in filing his notice of appeal and that no extensions
20 will be requested either by Mr. Hart or Mr. Shainswit
21 and that the case will be processed through the Court of
22 Appeals at the earliest possible date.

23 MR. HART: We certainly intend to do that,
24 your Honor.

25 May I ask one question?

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2 THE COURT: Yes.

3 MR. HART: Did your Honor say you were going
4 to make further findings in this case?

5 THE COURT: The only finding I would make is
6 that as a result of the liability that the plaintiff
7 suffered damages in the amount of blank dollars. That's
8 all. That would be the sole thing.

9 If you want to waive those findings because my
10 opinion provides for the damages in the original opinion,
11 that is perfectly all right with me.

12 MR. HART: I would prefer not to waive it,
13 your Honor.

14 THE COURT: I will make findings on the issue
15 of damages.

16 Then I am going to file here -- I have letters
17 here. I think I had better take my letters back.

18 Do you want to take a look at that judgment,
19 Mr. Hart? It is the proposed judgment. Do you have
20 a copy?

21 MR. HART: Yes, sir. Before I look at this,
22 apropos of the findings, you mentioned something about
23 the subrogation issue. Would you put those in the
24 findings?

25 THE COURT: I certainly shall. I would

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2 be glad to. I thought without all the gobbledygook
3 and legalistics and pomposities in the present judgment
4 we could just put in, based upon the opinions of the Court
5 dated certain days, it is ordered that plaintiff recover
6 from the defendant \$1 million, with interest thereon, as
7 set forth below at the rate of -- and then you would have
8 to specify the rates because this is a defective form,
9 "Provided by law." You would have to put 6 per cent
10 from a certain date and then the other date and then do
11 what you have done here together with the interest, if that
12 is an appropriate way of doing it.

13 Mr. Hart, have you any objection if they
14 aggregate the interest up to the date of the entry of the
15 judgment?

16 MR. HART: No, I think not, your Honor. I have
17 no objection.

18 THE COURT: Then you can do that. Then
19 provide for the total amount of interest of 6 per cent from
20 the date of the entry of the judgment. We will deter-
21 mine the date upon which the judgment is to be entered.
22 So you can calculate the amount up to that date. Without
23 costs. And it will provide for a stay on the conditions
24 or you can do that in a special order if you so desire,
25 not to say it in the judgment but provide that the judgment

1 gws

2 execution shall be stayed until the Court of Appeals acts
3 on it upon the filing by the defendant of a bond in the
4 sum of \$100,000.

5 Is there anything else we have to worry about?
6 You had better tell me right now because I am going to
7 leave here and when I leave here I am not going to come
8 back for a little while.

9 MR. HART: Perhaps you can invite us to come
10 to Portland, your Honor.

11 THE COURT: If you want to come to Portland,
12 that is perfectly all right. You can argue all you want.
13 I will give you plenty of time if you come to Portland.
14 You won't be the first one who has come to Portland for
15 that purpose.

16 I want to say to you that we have three other
17 volumes. These are the court files, and I think you
18 ought to have them over here. I don't know what this
19 is. Oh, I have got five depositions over here. On
20 the payments made to investigate and settle claims of
21 property damage, I am going to overrule Mr. Hart's objec-
22 tions and I am going to admit it, so you will have that
23 in the record.

24 Let's get so I can go home. I am going to
25 take these papers and my correspondence back with me.

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2 If there is anything missing, you let me know what is
3 missing and if I have it in Portland, I will send it to
4 you.

5 MR. SHAINSWIT: May I send you a letter, if
6 is appropriate, on the question of subrogation? I have
7 reviewed the policy and I might want to call your Honor's
8 attention to it.

21 9 THE COURT: It is perfectly all right to write
10 me a letter on subrogation.

11 What is the problem on subrogation? Instead
12 of writing letters, tell me what is the problem?

13 MR. SHAINSWIT: I don't see why subrogation is
14 before the Court in view of the provisions of the policy
15 that deal with that very subject which provide that the
16 entry of any judgment shall in no way be affected.

17 THE COURT: Affected by what? You couldn't
18 collect twice, could you?

19 MR. SHAINSWIT: Nobody is claiming that.
20 What troubles me is sitting here in New York with one
21 lawsuit and then there are problems in another lawsuit out
22 in California and to have quick judgment, you know, in
23 terms of --

24 THE COURT: I am not going to put into that
25 subrogation all the rights of the parties. I am just

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2 going to say that they shall be entitled to subrogation
3 to the extent of any amount that they have paid. Maybe
4 to the extent provided by law.

5 I am not going to change the law.

6 MR. SHAINSWIT: You should not change the
7 rules on subrogation.

8 THE COURT: I didn't intend to do that. I am
9 not going to change the general law or, as I pointed out,
10 you may be entitled to even attorney fees and costs and
11 expenses before you begin to consider the question of
12 subrogation. I am not going to pass on this. But I
13 think that Mr. Hart or his company is entitled to a
14 provision that in the event it's paid they are entitled
15 to subrogation. That's all I am saying.

16 MR. SHAINSWIT: Whatever that may be or what-
17 ever it may mean.

18 THE COURT: Except this. I don't know what
19 it may mean, I just don't believe that you can collect
20 from him and collect from another company and retain both
21 of them. That's my point.

22 MR. HART: What is causing this discussion now
23 is the same thing that has brought us here today. If we
24 could have gotten the answers in depositions we would
25 know what to submit to the Court, instead of which the

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witnesses were instructed by their counsel don't answer any of those questions. So we are here.

Your Honor said earlier if they are suing out in California for something unconnected with the delaminated panels in vehicles, then of course we would not be entitled to subrogation. So what we are getting set up for here, I am afraid, is when the time comes we can bring another lawsuit and take the time of the Court again. So we will do it.

THE COURT: I want to say to you again that Mr. Shainswit has not been the soul of helpfulness in this problem. I think all counsel should share some responsibility. I am just sorry that I wasn't here earlier to sit down with you to see whether many of these things could be resolved, and I think had I been here we could have saved reams and reams of paper that have been filed in this case and just hours and hours of time that have been expended.

MR. HART: I agree, your Honor.

MR. SHAINSWIT: Thank you, your Honor.



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ANALYSIS FOR

AR 12 157
J. W. HILLMAN & HILLMAN
Hillman & Hillman
(2 copies)